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Perceptions of justice and fairness in criminal proceedings and restorative encounters: Extending theories of procedural justice

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BRIEF TABLE OF CONTENTS

DETAILED TABLE OF CONTENTS

LIST OF TABLES

LIST OF FIGURES

GENERAL INTRODUCTION

As it currently stands, restorative justice still lacks an anchoring theory (Lokanan, 2009: 290)

Criminologists like myself are highly familiar with Jeremy Bentham's panoptic ideal – though it was never fully realised, it permeated subsequent criminological thinking and shaped the development of the criminological tradition to a remarkable extent. We tend to be much less acquainted with his writings on punishment in general. A utilitarianist striving for fulfilment of the *greatest happiness principle*, Bentham (1748-1832) considered punishment an evil, yet a necessary one. He conceded that punishment contributes to harm in the world, but reasoned that it could prevent greater evil. Fear for punishment would keep citizens in check; in the long run, therefore, punishment would contribute to achieving the greatest happiness of all (Bentham, 1789; Harrison, 1995; Wachtel and McCold, 2001).

Another one of Bentham's reflections on the legal arena was that enacting law would allow maximising happiness in society. This idea clearly shows in a number of essays that Bentham devoted to his proposals on how to deal with international conflict and how to proceed in order to establish a peaceful, orderly, and safe world. His argument was that in order to prevent international conflict, legislation should be developed and a common tribunal established, so that "the necessity for war no longer follows from difference of opinion" (Bentham, 1786-89/1839: 552).

Bentham, because of his ideas on prison building, the establishment of tribunals and the necessity of punishment, is hardly entitled to be regarded as a predecessor to the legal philosophy under consideration in this dissertation, *i.e.* the philosophy of restorative justice. Yet this introduction did not set off with a reference to Bentham's work arbitrarily. In fact, the reason I started this dissertation with Bentham lies with his view on justice. Bentham asserted that whether or not justice is done is decided upon by those to whom justice should be done, that is, by those on the receiving end of justice, not by those who are supposed to 'do' justice (*i.e.* government) (Burns and Hart, 1970; Rosen, 1993; Young, 1994). The restorative justice movement shares this point of view, and it is this point of view on justice that guides this dissertation.

This view on justice has garnered wide interest in recent decades. Variations on the theme of 'relational justice' have explored this perspective (see e.g. Burnside and Baker, 1994). The philosophy of restorative justice and the theory of procedural justice, the first a legal philosophy, the second a social psychological empirical theory, have dominated thinking about relational forms of justice in recent decades. These two are therefore at the heart of this dissertation. They are inextricably connected, yet their relation is complicated. Clarification of this relation is the aim of this dissertation.

Back to Bentham: the penal equation

Bentham was a liberalist at heart. A rule central to liberalism is the penal equation (Norrie, 1996). Norrie describes the penal equation as "the formula that crime plus responsibility equals punishment" (p. 540). It is a founding assumption of liberalism that people act so as to maximise self-interest. Humans are perceived as rational actors who willingly and knowingly break the social contract when they intrude upon it (van Ruller, 2001a, 2001b); liberals reject determinism by social disadvantage or biological factors (Duff and Garland, 1994). They therefore reason that when people break the law, they should bear the consequences, and that a system of punishment is necessary in order to make people obey the law (Hudson, 2003a). This rational choice perspective provides the basis of Western criminal justice systems (Norrie, 1996): the criminal law assumes that humans are motivated by self-interest (Tyler, 1990) and that individuals are free agents. The consequence of breaking the law therefore is punishment, and justice is done when punishment has been delivered.

The end of the 19th century brought protest against this rational choice perspective (Kleemans, 2001). By now it is clear, first, that punishment does not deter to the extent it is often assumed to (e.g. Doob and Webster, 2003; Robinson and Darley, 2004; Wright *et al.*, 2004), and, second, that crime is caused not merely by rational considerations but also by social and psychological factors (determinism). Also, individuals are not anymore perceived as individualistic creatures that need coercion in order to shun from committing crime. It has been found that many people respect the law for reasons that cannot be explained with a reference to self-interest or punishment. Rather, they are explained with a reference to normative values: people are perceived to be cooperative creatures that are willing to behave in accordance with social values about what is right and proper *voluntarily* (Tyler, 1990), provided that the authorities enforcing the law are perceived to be legitimate.

These evolving images on humans have changed views on how to do justice. As said, the economic conception of humans implied that justice was thought to have been achieved when those guilty of breaking the law had been adequately punished. The conception of humans as moral entities behaving in accordance with the law voluntarily suggested that people's reactions to legal decisions should be looked at from a new perspective (Lind and Tyler, 1988). Specifically, it was discovered that people judge their experience with the criminal justice system not only with reference to the outcomes they receive. Their level of satisfaction and subsequent willingness to obey the law is affected by legal decision making procedures too (Lind and Tyler, 1988; Tyler, 1990). Citizen dissatisfaction with government, it was found, should not be attributed solely to the failure of the government to deliver desired outcomes or to frustration about governments' autonomy to punish, but also to the unfairness of (legal) decision making procedures (Lind and Tyler, 1988).

Relational models of justice rife in the wake of this shift to a new perspective on humans. They counter the traditional top-down imposition of punishment to replace it with a justice process that is 'shared' (Norrie, 2000). Relational justice is about looking for ways to deal with crime that include repairing the harm caused by crime and the relationships that were breached with a strong focus on participatory approaches and involving communities (Schluter, 1994). It implies that the particularities of the lives of the individuals touched by crime are taken into account and that the dissocialising aspects that come with punishment are avoided (Norrie, 1996). Examples of relational approaches to justice are 'alternative dispute resolution', 'neighbourhood justice', 'community justice' (Pavlich, 2005) and those participative elements that have been introduced in criminal justice. But the most comprehensive attempt to create a relational model of justice has been made by the restorative justice community.

Restorative justice philosophy[1]

A publication by Eglash (1977) inspired the founding father of restorative justice, Howard Zehr (1990/2005), to apply the term 'restorative justice' to a number of relational approaches to justice that had been experimented with since the 1970s. Restorative justice forces three fundamental questions upon criminologists: first, "who owns a dispute?" (Tyler, 1990: 155), second, "whom must the justice system serve?" (Brochu, 2005: 86), and, third, "from whose perspective should we consider and evaluate the criminal justice system?" (Shapland, 2003: 196). Restorative justice's reply to all three questions includes 'the disputants'. The reply to the first question is not merely 'the state', and neither the reply to the second nor to the third question involves only 'society'. Thibaut and Walker (1975: 67) wrote that "most obviously relevant in evaluating the satisfactoriness of any procedure are (…) the principals whose fortune or outcomes are determined by the result of the case". According to restorative justice philosophy, those principals are those affected by crime and the perpetrators themselves. Justice is done when these people's needs have been satisfied to the fullest extent possible, that is, when those hurt by crime have been restored (Zehr, 1990/2005).

One major concern of the restorative justice community is that since the state 'stole' conflicts from victims and offenders to handle them itself (Christie, 1977), these victims and offenders have

[1] Though restorative justice is often labelled a theory, I prefer to call it a philosophy, as does Walgrave (2008a). There are two reasons for this point of view. First, restorative justice is constituted on a belief in values and principles; it is a description of an ideal (Walgrave, 2002a). Second, restorative justice developed bottom-up, from practice, with no strong theories guiding the initial practices – only later, theories were constructed or sought to explain the positive results of restorative interventions. The explanatory theories are borrowed from other sciences (e.g. procedural justice theory) or were constructed after the initial initiatives proved helpful (e.g. reintegrative shaming). Yet restorative justice *itself* is not a theory.

been reduced to bystanders in the criminal proceedings (Zehr, 1990/2005). Victims were replaced by the state as the one prosecuting offenders (Braithwaite, 2007), and the offender, though one of the two protagonists in criminal justice, just like the victim is reduced to an object of state intervention (Aertsen, forthcoming). Offenders hear others presenting their life and character in court and witness those others deciding on their future (Hudson, 2003b). Hudson (2003b: 179) writes that whereas victims are excluded *from* the criminal proceedings, offenders are excluded *by* those proceedings (original emphasis). Taking responsibility is limited to accepting one's punishment; offenders are not truly encouraged to account for their deeds towards those they have hurt. In fact, the restorative justice community perceives the fact that criminal justice does not truly encourage offenders to take responsibility as one of its major failures (Pollard, 2000).

Interventions based on restorative principles provide victims and offenders with the opportunity to take the resolution of the conflict that arose between them because of crime into their own hands, provided they want to, and with the caveat that sometimes a state intervention does still follow the restorative intervention. Restorative scholars argue that the parties to a conflict should be allowed to define 'justice' for themselves and collectively decide how justice can be done, "rather than [to] simply provide offenders with legal or formal justice and victims with no justice at all" (Morris, 2002: 598). In other words, restorative scholars defy the assumption that punishment of the offender is sufficient in order to produce perceptions of justice (Braithwaite, 2007; Okimoto *et al.*, 2009).

In summary, restorative justice is about reconsidering the basic presumptions that are made about crime and justice and about how to respond to crime (Zehr, 1990/2005). It aims at a situation in which the reaction to crime involves that:

1. The harm caused by the offence and the needs resulting from the offence are discussed and defined.
2. The offender is called upon to put right this harm.
3. The harm may be put right in several ways; the use of punishment is denounced.
4. Justice is measured by the extent to which the needs of those harmed by crime have been addressed.
5. An offence is perceived as a violation of interpersonal relationships.

I formulated these five principles in such a way that they mirror those of criminal justice defined by Zehr (1990/2005: 65-66). But more principles should be added, as restorativists also have a different opinion on *who* should be involved in creating justice and *how* they are to be involved (Zehr, 2002):

6. All those who have been directly or indirectly affected by the offence are considered stakeholders. They are all entitled to participate in the communication process mentioned in principle seven.
7. Restorative justice aims to set up (direct or indirect) communication between the stakeholders; these are invited to participate in the settlement of the offence. Keywords are 'collaborative', 'inclusive', 'engagement', 'participation', 'mutual agreement' and 'meeting' (extracted from Zehr, 2002: 25-26).

Restorative justice has been widely welcomed by the most diverse groups. It has garnered the interest of victim support workers and victims' rights advocates and it has been applauded by practitioners working with offenders and in rehabilitation (Fattah, 2004). It also appeals to different political ideologies. Liberals value it for its focus on repairing the harm done to victims and communities, its zeal for decentralisation and its non-state-centred definition of crime; conservatives appreciate its focus on victim empowerment and restitution and empowerment of families (Levrant *et al.*, 1999; Braithwaite, 2002b; Pavlich, 2005). Restorative justice appeals to people from various religions, continents and traditions and despite their differences seems to be able to unite them around mutually recognised values (Levrant *et al.*, 1999; Wheeldon, 2009).

However, one quickly discovers that restorative advocates have not agreed on a definition of restorative justice. This is not to say that restorative justice is based on loose bits and pieces. Aertsen (2008) and Daly and Immarigeon (1998) argue that the absence of a universal definition of restorative justice needs not be a problem because restorative justice advocates do share a common understanding of what restorative justice is. Some even state that it may not be *desirable* to develop such a definition; instead, restorative justice advocates should "value its fluid nature" (Zehr and Mika, 1998: 49). But precisely this vague status of restorative programmes leads critics to question these programmes' legitimacy and obliges restorative advocates to reflect on restorative justice's theoretical foundations (Claes and Peters, 2005; Walgrave, 2008b). As restorative justice grew and affected ever more criminal justice systems around the world, loud calls sounded for it to clarify its normative foundation. A reform movement based on good intentions, restorative justice could not provide guarantees for its good intentions to result in good practices. Many reform movements over the years had been witnessed to have the best intentions (e.g. the prison movement or the rehabilitative movement) but to result in unforeseen and undesirable outcomes (Zehr, 1990/2005). For a number of years now, critics therefore call for restorative justice to explicit its normative basis. If it forsakes to do so, it may suffer the same fate than those previous movements. Pavlich (2002: 2) with respect to this call for legitimation has written that "it may be apposite to refuse a blackmail that commands us to come up with well-founded universal principles or else be condemned as unethical, immoral or just plain irrational". Still voices calling for legitimation resound widely.

One could object that restorative justice can hardly be blamed for not having elaborated on its theoretical foundation for a long time because, as noted, the restorative movement is a practice-based movement that grew bottom-up, inspired by field practice (McCold, 2000; McCold and Wachtel, 2002; Zehr, 2002; Wheeldon, 2009). However today, flaws and paradoxes in restorative thinking are increasingly put on the table (e.g. Albrecht, 2001; Daly, 2002, 2003b; Pavlich, 2005; Gavrielides, 2008) and restorative justice advocates need to provide for theoretical foundations in order to

survive thorny questions and criticism. In that respect, procedural justice theory is very often referred to by restorative justice authors or those evaluating restorative programmes (e.g. Peachey, 1986; Braithwaite, 1999; Sherman, 2003; Tyler, 2006; Tyler *et al.*, 2007). Restorative justice's assertion that empowerment of the parties affected by crime (as victim, offender, or as a community member) contributes to feelings of fairness and satisfaction is supported by the theory of procedural justice.

Procedural justice theory

Restorative justice has found a theoretical basis for advancing the realisation of its inclusion principle, that is, the involvement of the parties to conflict in the settlement of their conflict, in the social psychological theory of procedural justice. In the 1970s, justice researchers found that when litigants evaluate the fairness of legal decision making processes, they are concerned not only with the fairness or desirability of the outcome of the decision making process but also with the fairness of the decision making procedure itself. Litigants and observers were found to care about how decisions are made and about how litigants are treated by legal authorities and other parties involved in the decision making process (Lind and Tyler, 1988). Furthermore, it was found that litigants who participated in a decision making procedure are more likely to view the procedure and the outcome of the procedure as fair and satisfactory than those who did not (Thibaut and Walker, 1975).

As Malsch (2009) points out, when discussing procedures within the framework of procedural justice theory, the term 'procedure' should be interpreted broadly. The interpersonal contact between citizens and authorities, the information that citizens are supplied with, the chances that they are offered for conveying to the authorities/decision makers their own point of view and the way the procedures, interpreted in a narrow sense, are conducted, are all elements of 'procedure'.

For a long time, psychosocial research on how people evaluate their experiences was dominated by distributive justice theory. Distributive justice theory speaks to the mind of many, maintaining that what determines people's evaluations of legal (and other) experiences is the outcome or net result of that experience. Translating this to a penal context, the judge's verdict and the sentence that had been pronounced were assumed to determine individuals' perceptions of the criminal justice system. Thibaut and Walker in the 1970s (1975, 1978) made the striking observation that procedural variation too affected litigants' evaluations of their experience with the criminal justice system. One of the most influential procedural variations, they found, was to provide litigants with an opportunity to participate in the decision making procedure. Participation significantly increased satisfaction with the decision making process and the outcome and subsequent evaluations of the fairness of the process and the outcome. Moreover, Thibaut and Walker found that litigants were more likely to accept an undesirable or unsatisfactory outcome when it resulted from a fair procedure. Procedural

justice theory was further developed mainly by Lind and Tyler (Lind and Tyler, 1988; Tyler and Lind, 1992; Tyler, 1990). Up till today, it is a much-pursued area of research, offering broad opportunities for analysing the relation between the state as represented by criminal justice authorities and individual citizens.

Problem definition

The theory of procedural justice provides restorative justice philosophy with a normative basis for justifying its call for inclusion of the parties to a conflict in the administration of justice. However the last decade, new hypotheses on the importance of procedures to justice judgements have been advanced in social psychology. These assert that the value of procedural fairness in some situations cannot counterbalance the negative effect of an undesirable or unfair outcome. According to the *value protection model*, disputants' judgements on the fairness of decision making procedures and the outcomes resulting from these procedures often are determined solely by those outcomes; decision making procedures in such cases have little or no impact on fairness judgements. *Fairness heuristic theory* states that procedural fairness is not intrinsically more important than outcome favourability or outcome fairness for judging decision making procedures. It is simply more often used because procedural fairness information often is available before outcome information is.

These new developments provide problems for restorative justice, as in case these two new hypotheses are justified, the manner in which legal proceedings are conducted and the manner in which legal professionals treat the parties involved in these proceedings are not as important as restorative scholars assume they are. This would not mean that restorative justice would have no *raison d'être*, because procedural justice is not the only or exclusive basis for restorative justice[2], but it would mean that procedural justice theory cannot provide for a normative framework for restorative justice. Restorative justice's normative basis, then, seems to depend in part on the veracity of procedural justice theory and the new hypotheses introduced. Now that it gradually becomes clear that people may base their fairness judgements on other than procedural fairness elements, elements which counteract the effect of procedural factors, it seems that restorative justice may need to reconsider its theoretical basis. This dissertation aims to determine whether it should indeed do so.

Until recently, the different perspectives on fairness were treated as opposing and therefore by definition incompatible views on the same matter. They have puzzled many a researcher (e.g. Cahill, 2005), leading them to ask the question whether people prefer a fair process or a correct result.

[2] Other theories that have been advanced to provide a normative basis for restorative justice are e.g. theories of reintegrative shaming and unacknowledged shame (Braithwaite, 2002b).

Undeniably, at first sight the three perspectives indeed seem conflicting. Papers such as the one by Napier and Tyler (2008), in which Tyler earnestly defends 'his' procedural justice model against the 'attacks' to the model by the moral mandate literature, and the subsequent reply by Skitka and Mullen (2008), preserve this image of competing perspectives. Skitka (2003, 2009) however integrated the different models to conclude that how people define fair and unfair behaviour depends on the specific situation they are in. The crux of Skitka's attempt for integration of these three perspectives that at first sight seem contradictory is that one should not study these perspectives with a view to determining which one makes the correct assumptions and predictions and which ones do not. As Skitka indicates and as the literature review will show, each of these three perspectives has been thoroughly examined and empirically confirmed. The question should therefore not be which of the perspectives on justice is 'right', and which are not. What should be examined is *when* each of these perspectives makes the correct predictions and *for whom*: when do the determining elements advanced by procedural justice and the outcome-based new hypotheses matter most (that is, when do specific elements drive justice judgements) and for whom (as different people may react differently to the same (un)fair procedures (De Cremer and Blader, 2006; Skitka, 2009))? What is needed today is not more research on which elements determine justice judgements; forty years of justice research have learned us most of what there is to know about this. What is needed is research defining *when* each of these factors is more important: to whom, and in which situations (Tyler *et al.*, 1999; Mullen and Skitka, 2006). Research needs to examine the relative weight that people place on outcomes versus procedures in different situations and to determine when people will weigh different concerns more heavily. Thus, whereas Cahill in 2005 (p. 181-182) formulated the question "how much do people care about process as opposed to substance when the two conflict? (....) Do people prefer a "fair" process – whatever that means – or a correct result?", this question nowadays is not posed anymore. Research should not focus on establishing which one of these perspectives applies to all circumstances, but should ask the question when each of the perspectives applies and when certain determinants of justice are more likely to influence justice judgements than others (Skitka, 2009). Tyler (1990: 76-77) has asserted the following:

> The conflict between the approach that stresses favorability and that which stresses fairness should not be presented as a struggle to determine which of the two approaches is always correct. Undoubtedly each approach is correct in some circumstances. What is ultimately needed is a typology of factors that predispose individuals towards considering fairness instead of personal gains and losses.

In a 2000 paper Tyler repeats this assertion: "People view different procedural elements as being key to define procedural fairness within particular situations" (Tyler, 2000a: 123). A different model of fairness is applied to different situations. This dissertation aims to contribute to answering the question on the 'when' of justice judgements. In order to do so, the experiences of victims and

offenders involved in criminal proceedings in Belgium will be examined, with specific attention to their use of procedural and outcome information in the pre-sentencing phase and in the post-sentencing phase. Because of the importance that is attached to participation by restorative justice and procedural justice researchers, another focal point is to assess the influence of participating in a restorative justice intervention (*i.e.* victim-offender mediation for redress[3]) on perceptions of fairness.

Research questions and goals of the current study

This dissertation has four main goals. First, it aims to contribute to answering the question of *when* favourability and fairness concerns weigh the most heavily in people's justice judgements. Specifically, it departs from the result of a study by Tyler *et al.* (1999) that indicates that people weigh the fairness of procedures more heavily in post-experience evaluations of conflict resolution procedures than when they make a pre-experience choice among procedures. The pre-experience choice of Tyler *et al.*'s (1999) participants was based primarily on instrumental reasons, *i.e.* on expectations about whether the procedure would lead to a favourable outcome, whereas post-experience evaluations were based mainly on the quality of the treatment that people had received from the decision maker. Pre-experience and post-experience evaluations, in other words, were based on a different set of concerns. The study presented in this dissertation examines pre- and post-experience evaluations of those experiencing the Belgian criminal justice system, in order to determine which elements drive fairness judgements *pre-sentencing and post-sentencing*.

A word on the specifics of the Belgian criminal justice system is in order in order to fully understand this goal. As it is a civil law system, the Belgian criminal justice system differs from common law legal systems in that there are no separate hearings for determining guilt and for determining the sentence. The pleas concerning the determination of guilt and the determination of the sentence take place during the same hearing. In his judgement, the judge decides on the question whether the accused is guilty and pronounces a sentence in case the defendant is indeed deemed guilty. Therefore when the term 'judgement' is used below, what is referred to is both the determination of guilt and the determination of the sentence. When writing about the 'pre-sentencing' phase, I refer to the phase before the trial, not the phase in between the guilt phase and the sentencing phase. The 'post-sentencing' phase is the phase that starts after the trial.[4]

[3] Victim-offender mediation for redress is the commonly used English translation for the Belgian mediation programme 'Herstelbemiddeling/Médiation après poursuite'. This is a victim-offender mediation programme that is aimed at victims and offenders of serious crimes. More information on the programme will follow in chapter four.
[4] Remark that litigants are usually informed about the judgement two to four weeks after the trial.

The second goal of the study is to make the theoretical concepts that will be defined as 'procedural information' (*i.e.* information communicating about 'standing', 'trust', 'neutrality', 'voice', 'process control' and 'decision control', see chapter two) more concrete. Which concrete situations do people have in mind when discussing e.g. the neutrality of the police? So far, studies have examined the importance of each of these concepts using general questions like "Were the authorities neutral?" The results of the current study should allow making these concepts more concrete: when reflecting on this question, which situations exactly are crossing people's minds?

The third goal of this study is to examine the moral mandate hypothesis. To this end the nature of victims' and offenders' opinions on punishment will be examined. Do they have a moral mandate on what a fair sentence would be in their case? Are these opinions fixed or fluid, that is, do changes in perspective come about during the experience?

The fourth goal is to investigate to which degree participation in a restorative justice programme influences the way people experience an encounter with the criminal justice system, and to which degree it may affect their perception of the criminal justice system. On the basis of procedural justice literature one would hypothesise that those people who participated in mediation feel more acknowledged than those who did not, as they have received an opportunity to voice their opinion. This dissertation aims to find out whether this is indeed true, whether participation in mediation also has an influence on other procedural elements and if so, whether this has an influence on people's perceptions of the criminal justice system.

Note that this study is the first one to empirically investigate procedural justice in Belgium, except for the recent one by Van Camp (2011). As the bulk of justice research has been conducted in the United States, the study in this respect too will add to the state of the art of justice research.

The problem definition and goals set for the study lead to one **overall research question**, which is: "To which degree does procedural justice theory provide for a normative foundation for restorative justice philosophy?" The answers to the following four research questions should allow providing an answer to this overall question:

1. How do the parties to a criminal case assess the fairness of the pre-trial phase?
    - 1.1. Is attention paid to procedural information during the pre-trial phase?
        - 1.1.1. What is the content of this information?
        - 1.1.2. Which function is assigned to this information?
    - 1.2. Is attention paid to outcome-related information during the pre-trial phase?
        - 1.2.1. What is the content of this information?
        - 1.2.2. Which function is assigned to this information?

2. In which terms do the parties to a criminal case talk about their court-related experience in the post-trial phase?
    2.1. Is attention paid to procedural information in the post-trial phase?
        2.1.1. What is the content of this information?
        2.1.2. Which function is assigned to this information?
    2.2. Is attention paid to outcome-related information in the post-trial phase?
        2.2.1. What is the content of this information?
        2.2.2. Which function is assigned to this information?

3. How do the parties to a criminal case assess the fairness of the outcome that was pronounced in their case?
    3.1. Do they display a strong belief (moral mandate) about the appropriateness of punishment and about the most appropriate punishment?
    3.2. Is their belief about the appropriateness of punishment and about the most appropriate punishment fluid or fixed in nature?
    3.3. Are comparisons made between the outcome of the trial and one's moral mandate, one's own expectations about the outcome, outcomes of similar cases or court rulings in other cases that they have experienced themselves or that have been experienced by friends, relatives or acquaintances?

4. To which degree does participation in victim-offender mediation for redress influence perceptions of fairness of the parties to a criminal case?
    4.1. To which degree do (intrusions upon) perceptions of procedural justice account for (dis)satisfaction with participation in mediation?
    4.2. To which degree does participation in mediation influence the way people experience their encounter with the criminal justice system?
    4.3. To which degree does participation in mediation influence people's perceptions of the criminal justice system?

The method chosen for investigating these issues was first and foremost a qualitative methodology. Victims and offenders who had been offered to participate in victim-offender mediation for redress and had taken the offer were interviewed at two occasions: once before trial and once after trial. One group of respondents consisted of those victims and offenders in whose case in the end no mediation had taken place because the other party refused; a second group consisted of those who

took part in (direct or indirect) mediation before trial. The interviews were supplemented by a survey, taken from these same respondents, and by focus groups with mediators.

Outline of the chapters

This dissertation consists of four parts. The **first part** (chapter one to three) explores the theoretical foundations of the dissertation. In the first chapter, I will introduce the reader to restorative justice philosophy. This chapter has two purposes. First, it serves as an introduction to the restorative mindset for readers unacquainted with restorative justice philosophy. Second, it provides insight into how exactly restorative scholars have conceptualised justice, and which role procedural justice theory has played in this. The second chapter is dedicated to the main theories of procedural justice that have been developed since the first model was presented by Thibaut and Walker (1975). Sufficient insight into these models is necessary, first, in order to fully grasp procedural justice theory and, second, because the concepts that will be used throughout this dissertation will be introduced and explained. In the third chapter, I will look into how procedural justice researchers have gradually moved away from a belief in a universally fair procedure that would apply to anyone in any situation to an understanding that justice is a concept that may be interpreted differently across different situations. Hence the importance of the 'when'-question. In this chapter, fairness heuristic theory and the value protection model are presented.

In the **second part** of the dissertation (chapter four), the design of the empirical study is presented. I will go into the way the participants were recruited, the data collection methods and the methods chosen for data analysis. In the **third part**, the results of the empirical study are presented and discussed. In four chapters (chapter five to eight), the four research questions are fleshed out. Chapter five and six are devoted respectively to the results on perceptions of fairness pre-trial and the results on perceptions of fairness post-trial. Chapter seven is dedicated to the respondents' perspectives on punishment, which are important, as said, in view of the allegations of the value protection model. In chapter eight, I will discuss whether participation in victim-offender mediation influences perceptions of procedural justice and of the criminal justice system. In the **fourth part** of the dissertation (chapter nine), the research questions are answered in a systematic way and the conclusions are presented. These include a reflection on the theories of justice that guided this study and the presentation of the model of procedural justice that results from this study.

Part I. THEORETICAL CONSTRUCTIONS

From the general introduction one can conclude that restorative justice's conceptualisation of justice is closer to emancipatory justice than to retributive justice. Restorativists believe that justice on an individual level can be realised only by providing victims and offenders with the opportunity to participate in the proceedings that are initiated after the offence. *Procedural* justice, then, is believed to be a prerequisite for emancipatory justice to be realised (Kool, 2005; Shapland *et al.*, 2006).

Understanding restorative justice's focus on inclusion and on participation and communication between the parties necessitates a broader understanding of restorative justice philosophy on the one hand and of procedural justice theory on the other hand. These two are therefore the focal points of the first part of this dissertation. The first chapter probes into restorative justice philosophy, the second chapter is devoted to the different models of procedural justice that have been presented by procedural justice researchers throughout the past four decades, and the third chapter presents the new hypotheses challenging procedural justice theory.

Chapter I. RESTORATIVE JUSTICE PHILOSOPHY

Restorative justice is now a global social movement advocating transformation of the criminal justice system. There is no criminal justice system that it has yet actually transformed, but there are few it has not touched.
(Braithwaite, 2000: 185)

Restorative justice is an approach to conflict that puts the parties to the conflict central in the settlement of the conflict. Restorativists share a common belief that the way criminal justice systems deal with crime is unethical and irresponsible and creates widespread injustice. Restorative practitioners and scholars have advanced a new conception of crime and have called for the inclusion of the central stakeholders in the response to crime. Remark that the conflicts that will be considered in this dissertation are those caused by crime, but that the restorative philosophy is not only applicable to crime. It has for example been applied to conflicts taking place in schools and in workplaces (Van Ness *et al.*, 2001; Johnstone and Van Ness, 2007a; Morrison, 2007). The restorative justice movement is the subject of the first chapter of this dissertation. This chapter consists of two sections. In the first section, I will provide the reader with a short introduction to restorative justice. In the second section, I will look into how restorative justice scholars have interpreted the notion 'justice'.

SECTION I. AN INTRODUCTION TO RESTORATIVE JUSTICE

Introduction

The first section of this chapter as said is meant to provide an introduction to the restorative justice mindset. This introduction is aimed at readers unacquainted with the restorative movement. Those familiar with restorative practice and literature may therefore find it insufficiently nuanced. It is true that though restorativists share a common understanding of crime and how it should be dealt with, many subtle or more obvious differences of opinion exist within the movement and quite some questions remain unanswered (see e.g. Johnstone, 2002; Gavrielides, 2008; Umbreit and Peterson Armour, 2011). A brief description of restorative justice's many facets can therefore not begin to capture the diversity of the movement, but for the purpose of this dissertation I will keep to a general overview of restorative justice philosophy. In doing so, I will address the history of restorative justice (§1), restorative justice's conception of crime and conflict (§2), the definition of restorative justice (§3), and the way crime and conflict are dealt with by restorative programmes (§4). I will conclude the section with a summary (§5).

§1. A brief history of restorative justice

Restorative justice came to the fore as a reaction to the evolution away from the social welfare state model to the social control state model. The social welfare state model had emerged from the late 1940s and early 1950s to be enforced after the Second World War. It was built on a belief in rehabilitation and characterised by government coming to the rescue of those with problems due to unemployment, old age or need. The social welfare state model was challenged by the social control state model, which represented a new attitude towards crime, drawing attention again to retribution and to the expressive value of justice (Offe, 1985; Garland, 2001; Fattah, 2004). Restorative justice in turn emerged as a challenge to the assumptions that administered public discourse about crime and justice in the social control state (Fattah, 2004). The founders of restorative justice philosophy faulted the criminal justice system in particular for excluding those affected by crime from the criminal proceedings (Christie, 1977) and for having installed retributive punishment as the default response to crime.

Restorative practices are generally said to have appeared both on the European and American continent from the 1970s onwards (Lauwaert and Aertsen, 2002). Many restorative justice advocates have advanced the thesis that restorative justice is not an entirely new approach to crime. They have argued that humans have used forms of restorative or community-based justice to respond to conflicts between community members for the larger part of their existence (Zehr, 1990/2005, 2002;

Fattah, 1998, 2004; Braithwaite, 1999, 2001, 2002b; Weitekamp, 1999, 2002; Liebmann, 2007) and that the evolution of restorative justice therefore is more akin to a process of (re)discovery than to one of invention (McCold, 2000). Old clannish and indigenous practices have indeed been important sources of inspiration, even models, for current-day restorative practice (Brunk, 2001; McCold, 2001; Roberts and Roach, 2003; Umbreit and Peterson Armour, 2011). But the claim that restorative justice *predates* criminal justice has been heavily questioned (see e.g. Barton, 2000, 2003; Crawford, 2002; Daly, 2002; Cunneen, 2003, 2004; Sylvester, 2003; Bottoms, 2003). Some restorativists stand accused for presenting misleading and distorted accounts of the use of restorative and retributive means in ancient and colonial societies. Though restorative, community-based practices of problem-solving definitely seem to have been *present* in ancient societies, they may not have been the *only* or even the *primary* responses to crime in those societies.

Whatever the veracity of the claim that restorative justice has a longer history than criminal justice, it is clear that forms of community-based justice fell into disuse from the 18th century onwards, when urbanisation and industrialisation changed western class structures and the state's power grew. The conditions necessary for community justice to function slowly disappeared as communities became fragmented because of urbanisation and industrialisation, but according to Pratt (2006) and others (e.g. Bazemore, 2000; Braithwaite, 2001; Johnstone, 2002), changes in state appropriation of conflict were the most important cause for the disappearance of community justice practices. The decline (and, for that matter, the contemporary resurgence) of restorative justice was (is) perceived to be due mainly to changes in state centralisation and decentralisation, the transformation of the role of the state and the changing relation between the state and the community. Community-based, decentralised forms of justice are found in conjunction with weak, absent or non-functioning central states (Pratt, 2006). Just as state centralisation is perceived to have been the key to the detriment of community justice, so are the state decentralisation tendencies that mark Western societies since the 1980s perceived to have provided the soil for contemporary ideas on restorative justice to breed. The neo-liberal answer to state decentralisation was to make citizens responsible for their own safety and welfare and to urge them not to rely on the state anymore for protecting them (Garland, 2001). The idea of individuals protecting themselves is comprised in the notion of "active citizenship" (Mawby and Walklate, 1994: 173). Individuals are perceived as people who are able to choose the risks to which they expose themselves and thus are deemed sufficiently competent to avoid becoming a victim of crime (Spalek, 2006). This stress on human agency allowed for the development of community-based responses to crime that throughout the years have been grouped under the umbrella 'restorative justice'.

Restorative programmes (in particular victim-offender mediation programmes) first appeared in Europe in the 1980s (Miers, 2001; Lauwaert and Aertsen, 2002; Pelikan and Trenczek, 2008). Restorative justice has grown out of experience (Van Ness *et al.*, 2001)[5]: it grew bottom-up, furthered by a group of academics and practitioners from within and outside criminal justice, the specialities of whom laid in programmes with a wide range, such as community conflict resolution programmes, probation and parole services, victim services, the prison system, and law enforcement (Brunk, 2001). They represented a wide variety of political and ideological ideas, affiliations and backgrounds (McLaughlin *et al.*, 2003), coming from, for example, the informal justice movement, the restitution movement, the victims' movement or the feminist movement (Van Ness and Heetderks Strong, 1997). Many pilots were conducted by these practitioners (e.g. Peachey, 1989; see also Zehr, 1990/2005) and built upon those practices, restorative justice gradually developed into a distinct set of practices and values, a paradigm according to some (e.g. Zehr, 1990/2005).

The restorative justice mindset became an important factor in policy in the 1990s, with legislation being developed in several European countries by the end of the 1990s (Braithwaite, 2002b; Zehr, 2002; Pelikan and Trenczek, 2008; Willemsens, 2008; Walgrave, 2008a; Woolford and Ratner, 2008). The Council of Europe and the European Union have stimulated the development of restorative justice in Europe through the development of European legislation, and the United Nations has played a similar role at an international level.[6] Restorative practices have by now developed around the globe (see Miers, 2001, 2007; Miers and Willemsens, 2004; Aertsen and Miers, 2008; Miers and Aertsen, 2008 and forthcoming; Vanfraechem *et al.*, 2010, and the regional reviews in Johnstone and Van Ness, 2007c chapter 24) and several decades of empirical research on restorative programmes have not failed to validate the claims about what these can achieve in terms of victim healing, offender reintegration and reparation of the harm caused by crime (for an overview see e.g. Braithwaite, 2002b chapter 3; Sherman and Strang, 2007; Umbreit *et al.*, 2008).

§2. A new conception of crime and conflict

Restorative justice advocates conceive of crime not in a traditional sense, that is, not as a mere intrusion upon the law and the state's power (Fattah, 1998). The state is not considered the primary victim of crime (Umbreit and Peterson Armour, 2011). Instead, crime is conceptualised relationally: it

[5] In fact, some of the leading authors on restorative justice were practitioners. Van Ness and Heetderks Strong (1997) mention Howard Zehr, Wesley Cragg and Martin Wright.

[6] See Recommendation No. R (99) 19 on Mediation in Penal Matters of the Council of Europe, the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings and the United Nations Resolution on Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (2002).

is first and foremost an intrusion upon another individual's identity, an act that causes harm to another citizen (Boutellier, 2002; Elliott, 2002). Crime is perceived as a violation of one person by another person and consequently as a violation of these people's interpersonal relationship (Marshall, 1994; Zehr and Mika, 1998; Zehr, 1990/2005, 2002; McLaughlin *et al.*, 2003). Restorative advocates like to substitute the concept 'crime' with 'harm', 'conflict' or 'dispute' in order to substantiate the claim that unacceptable behaviour does not *need* to be labelled 'crime' (Mc Laughlin *et al.*, 2003).[7]

The fact that crime is defined first and foremost as a conflict between an individual victim and offender does not mean that restorative justice advocates deny that there is a public dimension to crime too. Authors such as Dignan and Cavadino (1996), Foqué (2005) and Walgrave (2010) attest to the importance of the community when stressing that crime is more than an interpersonal conflict. Crime has societal implications too, as it affects societies' constitutive principles and values. The restorative ideal therefore is for restorative interventions to involve not only the victim and the offender but also victims' and offenders' *communities*. The reasons for including community members are several. First of all, as said, by including the community in the response to crime, restorativists wish to acknowledge that people not directly involved in the crime also have an interest in successful conflict resolution (Elliott, 2002). It is a defining characteristic of restorative justice that it views the community as a secondary victim of crime (Ashworth, 1993; Zehr, 2002). Second, the community holds big potential for prevention and hence for dealing with problems before they burst and are picked up by the criminal justice system (Elliott, 2002). Third, including community members allows putting the conflict in its economic and social context, which allows learning about the causal factors for the conflict (Mackey, 2000). Fourth, the community is the key to victim and offender reintegration and should monitor the completion of agreements resulting from restorative interventions (Van Ness and Heetderks Strong, 1997; Schiff, 2007). Fifth, it is assumed that offenders' willingness to take responsibility is higher when they are faced with members of their own community, that is, persons close to them, than when they are faced with strangers (*i.e.* members of the judiciary) (Schiff, 2007). Sixth, it is supposed that victims are more likely to feel vindicated and experience support when it comes from those most important to them (McCold, 2000). Finally, involving community members in restorative practices is supposed to serve a social education purpose, that is, to educate communities on how to deal with conflict (Lauwaert and Aertsen, 2002).

[7] The manner in which crime is defined, *i.e.* with reference to harm, raises questions with Pavlich (2005). Restorative scholars, he writes, do not actually *define* crime. They do not offer concrete, tangible criteria for defining when a given act is a crime; at the end of the day, restorative justice relies on the definition of crime that is offered by the law, that is, by the system that is challenged so earnestly. However, while it is true that restorative interventions often depart from the traditional definition of crime, there is obviously room throughout these interventions to redefine the crime, that is, to nuance and possibly question the definition of crime as included in the criminal law.

Restorative justice's conception of crime shows in restorative justice adherents' ideas about the most appropriate response to crime and the mechanisms that are advanced to settle disputes. The conflict, in restorative terms, is given back to the people from whom it has been 'stolen' by the criminal justice system (Christie, 1977). Victims, offenders and communities, as the prime stakeholders, can become personally and actively involved in the resolution of the conflict if they wish to (Marshall, 1999; Umbreit and Peterson Armour, 2011). They are offered a safe and structured opportunity to meet each other and discuss the harm that was caused and how it could be repaired (Braithwaite, 2007). The manners in which this is organised in concrete will be discussed below (§4).

§3. A definition of restorative justice

Restorative justice has been described as a social movement by authors as diverse as Braithwaite (2002b, 2003a), Levrant *et al.* (1999), Bazemore (2000), Mackey (2000), Cohen (2001), Van Ness *et al.* (2001), Boutellier (2002), Dignan (2002), Johnstone and Van Ness (2007b), Roche (2007) and Umbreit and Peterson Armour (2011). Social movements tend to define themselves in opposition to the group they criticise (Reger, 2002). The founders by definition concentrate on "the limitations, partial rigidities, instances of malfunctioning, and empirical evidence of deterioration" of the system they oppose (Offe, 1985: 855). This applies very well to restorative justice: until recently, it was as a rule defined as an alternative to retributive justice (Van Ness *et al.*, 2001; Braithwaite, 2002b; Roche, 2007). Founding restorative justice texts such as Zehr's (1990/2005) book *Changing Lenses* set this process in motion. Simple and orderly tables were published that arranged restorative justice's alleged strengths against criminal justice's alleged weaknesses. Early restorativists were convinced that restorative justice had everything to offer that the criminal justice system had not: respect, a friendly word, compassion, support, and individual autonomy. Examples of such inventories are found in Zehr (1990/2005)[8], Dignan and Cavadino (1996) and Umbreit (2001).

Restorative justice advocates have not used flattering language to describe the criminal justice system. They have contrasted restorative justice's features against those of criminal justice systems with no small degree of dismay. Fattah, for example, described the traditional criminal justice system as "a vestige from a bygone era", "frozen in time" (Fattah, 2002: 308-309, see also Fattah, 1998). In combination with the tables, such writings have produced a strong restorative/retributive dichotomy. It is not clear whether this effect was intended or consciously plotted, however, the dichotomy has

[8] It must be mentioned that in his 2002 book *The Little Book of Restorative Justice*, Zehr nuanced his position and distanced himself from the writings in which he contrasted restorative justice and retributive justice so sharply. Still this 2002 publication too contains a table contrasting restorative justice and criminal justice (on page 21).

for a long time been relied upon to define restorative justice. Recently, the dichotomy has been commented on by scholars. Though writers such as Johnstone (2002) approve of the sharp contrast that has been made between restorative justice and criminal justice because it allows for the insufficiencies of the criminal justice system to come to the surface, Lokanan (2009: 298) has denounced the practice of making lists that pitch the 'good' restorative movement against the 'bad' criminal justice system as "unhealthy", and Meier (1998) has commented that this way of defining restorative justice expresses especially what restorative justice is *not*, neglecting what it *is*.[9] Dignan (2002) has denounced the use of simple dichotomies because they give the impression that restorative justice is a coherent whole, while there are some differences of opinion within the restorative justice community, and Roche (2007) has taken this way of presenting restorative justice to the task because it distorts the real meaning both of retributive justice and of restorative justice.

Restorative scholars have therefore moved away from defining restorative justice solely in opposition to criminal justice. But they have struggled to come up with self-definitions not referring to criminal justice. Providing a 'positive' definition of restorative justice at a given point became necessary as all sorts of alternative practices were being put under the umbrella of restorative justice, even if inimical to the main values of restorative justice, despite their great diversity (Zehr and Mika, 1998; Van Ness, 2003; Warner Roberts, 2004; Pemberton *et al.*, 2006) and even if those programmes and policies had been developed and institutionalised long before restorative justice made its way into popular discourse (Daly and Immarigeon, 1998; Daly, 2002). Quite paradoxically, as Sullivan *et al.* (1998) point out, the fact that "the potential of restorative justice is so rich" (Kay Harris, 1998: 58) and the "vocabulary of restoration" is so appealing (McCold, 2000: 357) leads to acts of thoughtlessly including a wide range of practices under the restorative justice umbrella (Walgrave, 2005). These practices are oftentimes fundamentally different in background, scope and nature, to the degree that the restorative community cannot see the forest for the trees anymore. This situation has led observers to refer to restorative justice as "a loose assemblage of criminal justice processes, goals, values, spiritual beliefs, social justice commitments and even lifestyle choices" (Woolford and Ratner, 2008: 65). Restorative justice has become the victim of its own success, some say (Fattah, 2004). Among others, Morris (2002: 611) put that "there are too many schemes which claim to be examples of restorative justice but which fail to meet its key values. The label 'restorative justice' must be treasured; otherwise poor practices will continue to provide ammunition for critics to undermine it".

[9] These critics I assume would be pleased to find that a founding author like Zehr in his *Little Book of Restorative Justice* (2002) not only devoted pages to explaining what restorative justice is *not* but also put effort in explicitly explaining what it *is*.

For these reasons, it is at the same time extremely important and extremely difficult to delineate the boundaries of restorative justice, constructing one single definition including the great variety of restorative programmes but excluding those that are restorative only in name. Hitherto restorative advocates have not succeeded in creating one single, generally agreed upon definition of restorative justice. Some say that this in itself needs not be problematic, because restorative practices share a number of core elements and restorativists share visions that provide for a sense of unity (Walgrave, 2005; Pratt, 2006). It is true that in practice, there is a good understanding on the working principles and the fundamental values of restorative justice. Few for example would disagree that victim-offender mediation or conferencing are restorative practices. Moreover, it is asserted that defining restorative justice and subjecting it to strict rules would hamper its development (Bazemore, 2000; Walgrave, 2005). But others (Daly, 2008) are convinced that the lack of agreement heavily confuses newcomers. In any case, internal struggles impede from synthesising the fundamental restorative concepts and ideas into a coherent whole. It seems that the great variety in restorative justice discourse and practice forbids generalisation (Bazemore, 2000).

Despite the variety, two definitions of restorative justice have made it into every textbook and reader on the movement. The first one is Marshall's (1999: 5), who defines restorative justice as "a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future". The second one is the definition by Bazemore and Walgrave (1999: 48). They define restorative practices as "every action that is primarily oriented towards doing justice by repairing the harm that has been caused by a crime". I will come back to these definitions later on in this chapter (part §1 of section 2).

The United Nations too have advanced a definition of restorative justice. What is particular about this definition is that it does not try to capture the fundamentals of restorative justice in one single sentence but defines restorative processes, restorative outcomes and restorative programmes separately (United Nations Office on Drugs and Crime, 2006: 100):

1. *Restorative justice programme* means any programme that uses restorative processes and seeks to achieve restorative outcomes.

2. *Restorative process* means any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles.

3. *Restorative outcome* means an agreement reached as a result of a restorative process. Restorative outcomes include responses and programmes such as reparation, restitution and community service, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender.

§4. Alternative ways of dealing with crime and conflict

Restorative justice departs from the view that punishment is neither a natural nor an inevitable response to crime; it is a social choice (Zehr, 1990/2005; see also Zedner, 2004). Below I will describe the most important restorative means of responding to crime. Central to each of them is the inclusion of the direct stakeholders and the aim of working on the relationship between these people, because "[restorative justice] acknowledges that most conflicts develop within a larger emotional and relational context characterised by powerful feelings of disrespect, betrayal, and abuse. When these (…) are suppressed and not aired in a healthy manner, an agreement might be reached, but the underlying emotional conflict remains" (Umbreit and Peterson Armour, 2011: 21).

Restorativists have made the – in their view – "chief weakness of the status quo [*i.e.* the disempowerment of parties, VDM] [their] greatest strength" (Barton, 2003: 16). The goal of restorative interventions is for the victim and the offender to "construct an interpretation of the crime which does not make them adversaries of one other [sic]"; a "re-reading of the offence" is what is aimed at (Mannozzi, 2002: 237-238). Restorative interventions therefore often, but not necessarily, include gathering victims of crime and their offenders around the table for them to meet and talk. Establishing communication of this kind requires an appropriate setting. Restorative interventions for this reason take place in less formal settings than those provided by criminal justice (Crawford and Burden, 2005), spaces that are much more familiar to people than courtrooms and, above all, neutral, in order to create the right atmosphere for victim(s) and offender(s) to meet.

Different models of meetings between victims and offenders have been created. The difference between the models primarily relates to the degree of community involvement. In its nascent period especially, restorative justice was often equated with victim-offender mediation (Lauwaert and Aertsen, 2002; McCold, 2008). By now, the catalogue of restorative practices includes conferences, circles, victim impact panels, neighbourhood accountability boards, letters of apology, community work service, community panels, community policing, and offender re-entry (Warner Roberts, 2004). The prototypical models, however, are victim-offender mediation, conferencing, and circles (Raye and Warner Roberts, 2007; Umbreit and Peterson Armour, 2011).

Victim-offender mediation was first introduced in Canada in the 1970s (Peachey, 1989). Pelikan and Trenczek (2008) and Vanfraechem and Aertsen (2010) have observed that victim-offender mediation is the leading restorative practice in Europe. Victim-offender mediation programmes bring together the direct victim(s) and offender(s), who are assisted throughout the meeting by a mediator. During the meeting, the victim(s) and the offender(s) are invited to talk about the offence, its background and its context and about how the crime has affected them (the personal meaning of the offence).

Victims can ask their offender(s) any questions they may have. The process of victim-offender mediation does not necessarily involve a face-to-face meeting between the parties; mediators may function as a go-between, practising a form of 'shuttle diplomacy'. In such cases, they communicate the victim's messages to the offender and vice versa (Umbreit *et al.*, 2008).

The result of a victim-offender mediation process may be that the parties come to an agreement about how to restore the harm that has been caused by the offence (Aertsen and Peters, 1998) and have this agreement written down in a document. It should be added however that they are not *required* to reach such an agreement. They may not reach consensus about how to restore the harm but have still had the opportunity to talk and may value having had this opportunity in itself. Restorative meetings are not set up with the aim of having participants making compromises or arriving at an agreement on the restoration of harm. The aspect of them meeting and talking and as such being empowered prevails (Van Garsse, 2001; Toews and Zehr, 2003; Umbreit *et al.*, 2004).

The role of the mediator is to promote dialogue and encourage problem solving (Van Ness and Heetderks Strong, 1997). He/she does not impose an outcome (Van Ness and Heetderks Strong, 1997): *what* should be restored and *how* it should be restored are issues decided upon by the specific victim and offender, according to *their* concerns and *their* abilities, not by the law or any authority (Roach, 2006). One could then say that each restorative justice meeting is unique, as the participants to the specific meeting decide on the course of the meeting and its results (Shapland *et al.*, 2006). Restorative meetings may therefore result in endless variations. The range of potential outcomes of restorative processes is very broad, unlike the restrictive list of potential sanctions provided by criminal law (Crawford and Burden, 2005).

Restorative conferences differ from victim-offender mediation programmes in that they do necessarily involve a face-to-face encounter. Also, conferences generally gather not only the victim and the offender but also their supporters, which may be family members or other significant people (e.g. teachers) (Van Ness and Heetderks Strong, 1997; Kurki, 2000). For this reason, restorative conferences are best known as family-group conferences. The goal is similar to victim-offender mediation, *i.e.* to provide victim(s) and offender(s) with an opportunity to talk and ask each other questions. Conferencing has been developed primarily in English speaking or common law countries (Zinsstag *et al.*, 2011). The first conferencing model was developed in New Zealand in 1989 in response to youth crime (Vanfraechem and Walgrave, 2006; Vanfraechem, 2007; Maxwell *et al.*, 2008). Many conferencing models subsequently created in other countries adapted the New Zealand model; in other countries variants were created (e.g. the Wagga model in Australia, see Moore and O'Connell, 1994). Conferences based on the New Zealand model create time and space for the offender's family to hold a private family caucus in which the offender, with his family, contemplates

the possible ways to restore the harm caused (McCold, 2008; Maxwell *et al.*, 2008). When they have come to a proposal the conference resumes; the proposal is presented to the victim(s) and discussed.

Conferencing is not widespread across Europe (Vanfraechem and Walgrave, 2006), but a recent study by the European Forum for Restorative Justice has investigated the potential of conferencing in a European context (Zinsstag *et al.*, 2011) and has shown among other points that conferencing is increasingly being developed in civil law countries (e.g. Belgium and Norway). Furthermore, the study shows that though the majority of conferencing programmes deals solely with juvenile offenders, programmes including adults are becoming more and more common. Also, the types of crimes dealt with through means of a conference are expanding; the study showed that there are for example more initiatives dealing with crimes as severe as sexual violence as originally thought.

Restorative circles may involve even more participants than conferences: all local community members may be invited to attend circles (Coates *et al.*, 2003b). Circles may also be attended by members of the judiciary (Kurki, 2000). McCold (2008) discerns between peacemaking circles, healing circles and sentencing circles. Only the latter typically involve the actors that are traditionally found in the courtroom. Most importantly, though the name may suggest otherwise, sentencing circles do not revolve solely around reaching an agreement on the way the offender should make amends. The circle is a place where the community can discuss which elements of community life may have led to the crime and what can be done about these elements (Johnstone, 2002).

An aspect of main importance to the effective functioning of restorative circles is the degree of community interest in participating in these circles: interested community members need to be found for circles to function (Johnstone, 2002), but this is far from straightforward. Crawford and Burden (2005: 32) have described the skills of good panel members as "good motivation, character, communication skills, understanding and judgement, as well as positive attitude, commitment and reliability", which shows that they need to possess many qualities. Many other concerns have been raised about community involvement in restorative programmes. Some worry that community members, when (co-)deciding on what should be done to make amends, may easily revert to the means that they are most familiar with, *i.e.* to the options provided by the retributive or rehabilitative model, thus acting "like therapists or prosecutors" (Bazemore, 2000: 464; Mackey, 2000). Community members may also prove more severe than judges (Mackey, 2000). Moreover, there is concern that they may become professionalised and thus may lose their 'layness', that is, their non-professional voice and input and fresh view (Crawford, 2002; Crawford and Burden, 2005).

One last remark is that the three practices just described are increasingly being blended and hybrid models are created, for example adding officials to conferences (Zehr, 2002) or conferences involving only victims and offenders (Umbreit and Peterson Armour, 2011). This flexibility is a

notable characteristic of restorative practices: they can be adapted to the needs of the specific participants (Umbreit and Peterson Armour, 2011), which has been found to be highly valued by participants (Van Camp, 2011).

§5. Summary

The above overview is a broad outline of how restorative justice conceptualises crime and how it believes crime should be dealt with. Three things should be re-emphasised. First, restorative justice is based upon a different conception of crime than the traditional one: crime is understood to cause hurt to an interpersonal relationship and to a concrete victim, not merely to the state. Second, restorative justice is a holistic (that is, a comprehensive) response to wrongdoing: it aims to heal the wounds of the victim and society while trying to address the moral deficits of the offender (Zehr, 1990/2005; Van Ness and Heetderks Strong, 1997; Lokanan, 2009). Third, it involves more parties than a traditional criminal procedure: victims and communities are added as key players (Van Ness and Heetderks Strong, 1997; Zehr, 2002). In so doing, restorative justice aims to realise its promise that it is "justice that promotes healing" (Van Ness and Heetderks Strong, 1997: 31), not only of victims, but also of offenders and communities. In the next section, I will focus on restorativists' ideas on justice, as this is the notion central to this dissertation.

SECTION II. A RESTORATIVE UNDERSTANDING OF THE CONCEPT OF JUSTICE

Introduction

Though the restorative justice movement is widely striving to get recognition for its programmes, restorative justice remains a hazy notion of justice. Within the restorative movement there are many differences of opinion, as said, and in addition both the notion of restoration and the notion of justice have not received the academic attention that they, given their vital importance to the restorative justice movement, should have received. The notion of justice, which is central to this dissertation, is underdeveloped in restorative justice theory and practice (Aertsen, 2009).

The term *restorative* justice could lead many to assume that restorativists believe that justice will be perceived to be done by the people affected by crime if their situations have been returned to the status quo prior to the offence. It is a mistake to say so (Zehr, 1990/2005; Foqué, 2005). Restorativists acknowledge the impossibility of undoing the offence and its consequences; people's lives cannot be restored to their previous conditions. Bolívar (2010) has written extensively about the meaning of restoration for victims, and about related terms such as reparation and healing. She makes clear that the term restoration is conceptualised by restorativists very different from 'restoring people to their original state'. Mika *et al.* (2004), Foqué (2005) and Zehr (2010) in addition warn that victims may react aversely to 're'-words such as restoration, recovery and reparation, or to compensation. Some things cannot be compensated for, and things cannot be brought back to how they were. For offenders too, life has changed and cannot be reinstated without further ado. It is clear then that justice according to restorativists should not be equated to legal, formal justice; from the literature I will try to deduct how exactly it *is* understood by restorative scholars. Attention will in this section go to the debate within the restorative movement on whether justice is relational or substantial (§1) and to the belief that justice is something that is created by the parties to the conflict, not something that can be imposed top-down by third-party decision makers, which will lead to thorough reflection on the notion 'empowerment' (§2).

§1. Justice is relational, not substantial: a debate

Any discussion on restorative scholars' understanding of justice needs to start with the difference of opinion within the restorative movement on whether perceptions of justice emanating from restorative interventions proceed primarily from the process, that is, the meeting between victim, offender, and possibly community members, or from the outcome, that is, the agreement about restitution and compensation that was reached. The issue divides the restorative movement into so-called minimalists and maximalists. There is a clear tension between those who consider the aim of

restorative programmes to be reconciliation and a sense of justice therefore to proceed first and foremost from having been able to talk to the other party (minimalists) and those who deem the main objective of restorative programmes to be restitution and compensation for the victim and a sense of justice therefore to proceed in the first place from having been able to reach an agreement on compensation (maximalists). Below I will explore the debate.

§1.1. The process-based view on restorative justice

Barton (2003) wrote that restorative scholars and practitioners defy not so much the fact that penal sanctions are the standard responses to crime in contemporary society, nor the retributive character of these responses, but the fact that the processes that lead to the imposition of these responses disempower and silence the primary stakeholders to the conflict. This is certainly true for those holding a minimalist view on restorative justice. According to these scholars, it is the process through which the conflict giving rise to the judicial or restorative intervention is dealt with that distinguishes restorative justice from criminal justice, not so much the outcome of the intervention – in fact, it is argued that outcomes resulting from criminal justice processes and restorative processes may be very much alike (Daly, 2000; Kurki, 2000; Shapland, 2003; Aertsen, 2008). The definition best representing the process-based view on restorative justice is the widely-cited one by Marshall (1999: 5), who defines restorative justice as "a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future".

This definition represents the minimalist or purist position in restorative justice because defining restorative justice with a strong reference to the process excludes practices that do arrive at what could be called a restorative outcome (e.g. restoration of injury, dignity and feelings of safety, reconciliation, compensation for loss, restoration of peace in the community, creation of positive relationships, see Braithwaite, 2002b) but fail to do so through a procedure that respects the main restorative procedural values (e.g. empowerment, (voluntary) participation, the presence of all parties to the conflict, equal concern for all stakeholders, mutual respect and respectful listening, respect for human rights, addressing each party's interests, accountability, see Braithwaite, 2002a, 2003b; Dignan, 2003; Larson Sawin and Zehr, 2007). The requirement for restorative justice practices to be based on these values automatically excludes all retributive/deterrent/obedience elements and as such omits all court activity, even if resulting in a restorative outcome (McCold, 2000; Roach, 2006; Aertsen, 2008). It also excludes from restorative justice all programmes that coerce victims and/or offenders to participate (McCold, 2000). In fact, one of the first definitions of restorative justice, by Cragg, focuses exactly on this issue. Restorative justice is described by Cragg (1992: 165) as "resolving conflicts in a manner that reduces recourse to the justified use of force". Furthermore, the

requirement that both parties to the conflict participate in the restorative programme, for them to meet face-to-face (McCold, 2000; Dignan, 2002; Shapland *et al.*, 2006), excludes all activity that involves only the victim (e.g. victim support) or only the offender (e.g. rehabilitation). Proceduralists consider it unfeasible to address the relational aspects of a crime without conducting a meeting between victim and offender and other stakeholders (McCold, 2000). Yet recently this criterion has been relaxed to the extent that indirect forms of mediation too are considered restorative.

Quite some critical comments have been levelled against the process-based view on restorative justice. Dignan (2002) warns that the characteristics spelled out above risk limiting restorative interventions to less serious crimes and correspondingly risk impeding the future development of restorative justice. The criterion of voluntariness too has been under fire. First of all, the principle has been called naive. Offenders especially may feel coerced to participate in a restorative meeting for if they do not take part, prosecution and sanctions await them. The process-based view seems to disregard this possibility. Secondly, holding on firmly to the principle of voluntariness may cause restorative practices to be banned to the margins of the criminal justice system (Walgrave, 2010).

Other commentators have earnestly vilified Marshall's definition for neglecting outcomes and the goal of putting right the harm (e.g. Bazemore and Schiff, 2004). It is argued that the outcome of the process he advocates may not be restorative; quite to the contrary, his definition would allow for retributive or punitive sanctions to result from restorative processes (Boyes-Watson, 2000; Walgrave, 2008a) as there are no objective criteria nor rules as to what is and what is not a restorative outcome (Braithwaite, 2002b). Maxwell *et al.* (2008) go into the principle that all parties should be present for a meeting to be certified as restorative. In fact, they see no harm in the victim being absent from a restorative meeting: the victim's absence according to these authors does not prevent from the victim's view being presented anyhow by the facilitator, victim supporters or other victims of similar crimes. Also, it does not thwart the process of the offender thinking about how to make amends. Braithwaite (2002b) has added one other criticism, *i.e.* that Marshall's definition fails to explain who or what is to be restored. Moreover, maximalists such as Braithwaite (2002b) are convinced that programmes that are, from a purist point of view, not restorative because one of the requirements is not fulfilled (e.g. indirect mediation), may result in richer outcomes than those programmes that do fully respect the restorativeness of the process.

One author touches the heart of the process-based view on restorative justice as he states that sanctions decided on in court are actually *not* excluded from restorative justice by this definition. Meier (1998: 136) argues that if during a trial the judge, jury, prosecutor and defence come together to "collectively find a solution", this practice fits Marshall's definition perfectly. He, then, argues that the definition is not able to clearly distinguish between restorative justice and criminal justice.

Marshall's definition has on the other hand been applauded for its reference to restorative justice's future-orientedness (Shapland, 2003; Shapland *et al.*, 2006). Describing restorative justice as a process allows for outcomes of restorative meetings to have a future dimension, for follow-up of agreements made during restorative meetings, and meets victims' needs for helping the offender to keep from reoffending by allowing to talk about rehabilitative measures (Shapland, 2003; Shapland *et al.*, 2006). Dignan (2002: 172) praises the process-based view on restorative justice for its attention to core ethical values, which provide an "important and welcome acknowledgement of the potential abuses to which informal restorative justice processes might otherwise be subject".

§1.2. The outcome-based view on restorative justice

The outcome-based view on restorative justice has most carefully been defined by Bazemore and Walgrave. They have defined restorative justice as "every action that is primarily oriented towards doing justice by repairing the harm that has been caused by a crime" (Bazemore and Walgrave, 1999: 48). In a 2008 publication, Walgrave adjusted the definition, now describing restorative justice as "an option on doing justice after the occurrence of an offense that is primarily oriented towards repairing the individual, relational, and social harm that is caused by that offense" (Walgrave, 2008a: 621). The crux of the alteration is that instead of categorising programmes as restorative or non-restorative, the new definition allows for restorative programmes to differ in degree of restorativeness. Van Ness and Heetderks Strong (1997), Bazemore (2000), McCold (2000), Van Ness (2002a, 2002b), Zehr (2002) and Roche (2007) too have argued that a system is not either restorative or not – rather, there are degrees of restorativeness and different forms of restorative justice.[10] This is because restorative justice is based on values; these values can be reflected fully or partially by different programmes for dealing with crime (Van Ness, 2002a).

This is a maximalist view on restorative justice as opposed to the minimalist process-based view, for three main reasons. First, this view allows including a wider range of practices under the banner 'restorative justice', even allowing for judicial measures to be called (partly) restorative (Walgrave, 2008a) as long as they deliver restorative outcomes, that is, as long as they repair the harm caused by crime (Bazemore, 2000). Second, maximalists do not have a problem with restorative interventions taking place without the offender (Walgrave, 2008a) or the victim (Ashworth, 2000) being present, thus allowing for a much wider range of practices to be called restorative (e.g. victim support or rehabilitation programmes and all approaches that do not involve an encounter). Maximalists too

[10] McCold (2000) discerns between fully restorative practices, mostly restorative practices and partially restorative practices. Zehr (2002) adds potentially restorative practices and pseudo or non-restorative practices.

favour face-to-face meetings, but do not consider such a meeting an absolute requirement for restorative justice. They believe that even in the absence of the offender or victim respectively, victims' need for reparation of harm and offenders' need to make things right can be addressed (Bazemore, 2000). Third, maximalists believe that though voluntary participation in restorative justice is preferable, coerced participation of *offenders* should be possible (e.g. Walgrave, 2007). Maximalists find the idea that offenders voluntarily participate in restorative programmes naive, arguing that it is highly unlikely for offenders to not feel at least a certain amount of coercion to participate, either from their own environment or for strategic reasons (Braithwaite, 2002b). The defendant's decision on whether to participate is a *relatively* voluntary one (Meier, 1998) because the context within which (s)he makes a choice about participating in a restorative programme is one of threat. Offenders are well aware that refusing to engage in the restorative programme will lead to a court intervention; moreover, they are not in a position to reject community demands (Boyes-Watson, 2000; Johnstone, 2002). Van Ness and Heetderks Strong (1997: 62) write that though the coercion used should be "the least amount of coercion necessary", "there is no such thing as completely "voluntary" action in a coercive environment". Maximalists therefore declare that restorative justice should not so much be concerned with avoiding coercion but with avoiding an escalation of coercion (Braithwaite, 2002b), in that for example no pressure should be exerted by other parties such as the victim or the prosecutor in order to make the process more speedy (Meier, 1998).

Zehr in 2002 published a definition of restorative justice, describing it as "a compass, not a map", that is, as "a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible" (p. 10, 37). Though his definition involves a process perspective, in Zehr's opinion restorative interventions should be possible in case the offender is not apprehended or one of the parties is unwilling to participate. He furthermore argues that restorative justice tests justice "by its fruits" (Zehr, 1990/2005: 212) and as such represents the outcome-based view.

A problem with the outcome-based view on restorative justice is that, as acknowledged by Braithwaite (2002b) and Sullivan and Tifft (2008), within the restorative movement agreement on what counts as an unjust outcome or as a restorative outcome lacks. A lot of debate focuses on issues such as the value of proportionality (see Lauwaert, 2009) and the matter of whether the outcome of a restorative process should be completely in the hands of the participants (e.g. Barton, 2003) or should be limited by upper constraints (e.g. Braithwaite, 2002b). Outcome-based restorativists acknowledge that process values should trump outcomes when outcomes breach fundamental human rights, are overly punitive or do nothing to repair the victim. However in all other cases, it is asserted, the outcome as was decided upon in the restorative programme should be respected

(Braithwaite, 2002b). Still according to McCold (2000), the maximalist definition of restorative justice does not provide for objective evaluation criteria of outcomes, which is problematic given the centrality of outcomes to the outcome-based definitions of restorative justice.

Other critics have concentrated on the outcome-based view's insufficient attention to the concepts of participation and empowerment (Zernova and Wright, 2007). Whereas maximalists have faulted the process-based theorists for excluding from their definitions any reference to outcome, the definitions of Bazemore and Walgrave (1999) and Walgrave (2008a) could be erred themselves for lacking reference to the restorative value of participation. Zehr's definition does address the concept of participation, yet minimally, referring only to the need to *collectively* identify and address harms. Thus, McCold (2000: 397) concludes, not only does the maximalist definition fail to provide for evaluation criteria, that is, fails to define the "ends of justice", it also lacks a reference to "the means of justice" and how the reparation of harm that is central to the definition should be accomplished. Aertsen (2008) too stresses the participatory nature of restorative justice interventions.

McCold (2000: 391 and 396) has in addition earnestly vilified the outcome-based view's position that court-imposed restorative sanctions too are restorative practices, asserting that the incorporation of retributive/coercive elements in restorative justice not only adds to the confusion surrounding the concept of restorative justice but also is "the most certain way to co-opt the vision of restorative justice" and "a sure formula for net-widening". Boyes-Watson (2000) sounds a similar note, arguing that court-imposed sanctions cannot advance the transformation of the relationship between victim, offender and community and are therefore, in McCold's (2000) terms, only partly restorative outcomes.

§1.3. Conclusion

Within the restorative movement discussion exists as to *when* feelings of justice can be said to have been initiated. Some restorativists assert that feelings of justice can only be restored when people have been involved in a true restorative process, that is, a process respecting the main restorative values, even in the absence of a settlement on the harm. The mere opportunity for participation in the process then is said to be the crucial element for perceptions of justice to arise. Others deem it impossible for feelings of justice to be restored if no agreement on the settlement of the harm results from the restorative process. Note however that that does not imply that those scholars do not attach any importance to procedures: they do, and they too prefer procedures allowing for inclusion of the parties to the crime, but believe that feelings of justice emanate first and foremost from outcomes and that if those outcomes cannot be reached through a process of meeting and discussing, other options should not be excluded from restorative justice.

Essentially, what the outcome-based model and the process-based model disagree on is on the restorative values that should be prioritised: the outcome-based model regards the realisation of restorative outcomes as the primary value, whereas the process-based model considers the empowerment of stakeholders as the key value to be realised (Zernova and Wright, 2007). The current study aims to shed light on this debate by empirically investigating the question whether one of the two values is more important to those involved in a criminal case that is brought before court.

§2. Justice is created, not imposed: justice as empowerment

§2.1. Preliminary observations

Justice is not defined by restorative scholars with a mere reference to a solution for the settlement of damages imposed top-down. It is defined not with reference to external, objective criteria for defining justice (e.g. proportionality or just deserts criteria) or to legal justice but with reference to subjective justice. Justice on an individual level does not proceed merely from the knowledge that justice has been done on a legal level (Aertsen, 2009). In fact, whether or not justice has been done is defined by the stakeholders. Restorative justice is concerned with people's *subjective* perceptions of justice. Justice is something that should not be done *for* people by others and then reported to them or imposed on them; the *experience* of justice must occur (Zehr, 1990/2005: 203, original emphasis). Walgrave (2008b: 30-31) utters that "justice is what those concerned experience as such". Justice is created by the parties to the crime in a communicative experience; the lack of space provided for such communication in court is perceived to be a major source of perceptions of injustice (e.g. Barton, 2003; Kool, 2005). Justice according to restorative justice scholars and practitioners presupposes respect, empowerment and inclusiveness through participation, that is, justice according to restorativists presupposes *procedural justice* (Kool, 2005; Shapland *et al.*, 2006).

Procedural justice is a concept that has been elaborated on in social psychological studies on fairness and that was encapsulated in a theory in the 1970s through the work of social psychologist John Thibaut and legal expert Laurens Walker (1975, 1978). Essentially, procedural justice theory states that the perceptions of justice and fairness of people involved in a conflict contrary to intuitive belief do not exclusively result from the favourability of the conflict settlement (if they win or lose) but also from the fairness of the procedures that were used to settle the conflict.

Granted, in criminal justice too, justice is measured mainly by the process: justice has been done if the correct rules and processes have been followed (Zehr, 1990/2005). Yet criminal justice is concerned with objective and internal standards of justice. Justice has been done when the criminal proceedings were conducted according to the standards that the criminal justice system has set itself. The correct application of these rules is judged by legal professionals, and criminal procedures lead to

legal justice (Walgrave, 2007). But legal justice may not accord with what people involved in the legal process perceive as just (Walgrave, 2007). Criminal procedures are based on the belief that justice is a generalisable experience; however, needs for justice have been shown to differ from one person to another (Toews and Zehr, 2003). Restorative justice, then, is concerned with subjective perceptions of justice, that is, with the question whether justice has been done according to the standards of the people who encounter the criminal justice system, people who are external to the system.

§2.2. The conceptualisation of empowerment

Restorative justice is said to be not a particular practice but a set of principles and values (Marshall, 1999). The precise list of those values, as Larson Sawin and Zehr (2007: 46) indicate, "shifts slightly from one theorist or practitioner to the next". Braithwaite (2002b: 15) writes that "the social movement for restorative justice is so young that it is premature for anyone to have settled views on what should be conceived as restorative values": there has not been sufficient time to settle competing views. However, it can be said that the values are all derived from the principles of empowerment, identity, personal growth, autonomy and inclusiveness – those values that are highly valued by new social movements in general (Offe, 1985; Taylor and Van Dyke, 2004). Braithwaite (2003a) argues that these are universal values, in the sense that all cultures value reparation of harm, dignity and empowerment, to name a few.[11] The reason they are universal, he asserts, is because they are vital to human survival: they allow for emotional survival and living without fear.

Accordingly, justice is defined by restorativists with reference to concepts relating to empowerment. The reason is that they perceive the fact that both victims and offenders are no more than bystanders in criminal proceedings to be a major source for feelings of alienation and dissatisfaction with criminal justice. Victims are thought to need to regain a sense of power because being victimised destroys their belief in a just world, that is, their belief that the world is a just, orderly place and that people exert considerable control over their lives. Victims' belief in personal autonomy and personal safety (Lerner, 1980; Lerner and Montada, 1998; Zehr, 1990/2005, 2002) is destroyed. In order to recover, it is crucial for victims to regain a sense of power. As for offenders, they too are bystanders in the process that decides on their future. From the moment prosecution is started, all decisions are taken for the offender by others (Zehr, 1990/2005). The lack of opportunities to make one's own decisions, Zehr argues, is detrimental to one's sense of self-worth.

[11] Braithwaite does acknowledge that the methods considered most appropriate for realising these values may differ across cultures.

Restorative literature thus clearly presupposes that victims and offenders should be empowered in order for them to perceive that justice is done. Below I describe three theoretical perspectives on which restorative justice has based its concept of empowerment.

§2.2.1. Habermas' theory of communicative action

The concept of empowerment, and a perception of citizens as critical and active agents, was advanced by Habermas (1981, 1984) within the framework of his theory of communicative action. Empowerment of citizens according to Habermas is necessary for individuals to preserve their lifeworld from intrusion by the system. Restorative justice shares a similar notion of empowerment. It aims to empower citizens who are confronted with the criminal justice system in order for them to collectively resolve their conflict and as such foster the human potential for self-restoration.

Habermas belongs to the group of German neo-Marxists (the 'Frankfurt school') who from the 1920s gathered around a critique of classical Marxist theory. Classical Marxist theory, in a nutshell, revolves around the way that the structures steering society influence the events taking place in society. The structures are those of a global capitalist system that aim to ensure that the rich (and powerful) prosper at the expense of the poor (and powerless). Marxist theory aims to reveal such hidden workings of capitalism. Marxism has also been called historical materialism because it holds the view that economic development and the class struggle accompanying economic development are the motors of history. Marxism is concerned with emancipation of the masses (the poor) so as to substitute capitalism with communism (Hobden and Jones, 2005). Neo-Marxists oppose the Marxist view that humans are merely passive entities determined by natural forces. Rather, they believe that sociology should focus on human *activity* and on the way this activity influences social structures (Ritzer, 2008). Emancipation is a central theme in critical theory.

Turning attention to Habermas, then, he most earnestly challenges what he describes as individuals' reduction to passive employees, citizens, consumers, or clients of state agencies (Habermas, 1981) subordinated to the dictates of politics or the market economy (Stirk, 2000). He translates his awareness of possibilities for human *activity* in an interest in agency-structures linkages, dealing with them under the heading of 'the colonization of the life world' by 'the system' (Ritzer, 2008). These concepts refer to the same society, yet the system represents an external, observer's view on society while the lifeworld represents an internal, actor's view on society (Ritzer, 2008).

The system is constituted of the structures that steer the lifeworld, such as the judiciary, the state, and the economy. These structures are rooted in the lifeworld but grow more and more distant from the lifeworld as they develop and gain power (Ritzer, 2008). The system thus originates in the lifeworld. By exerting control over the lifeworld, the system in turn influences the lifeworld. The

lifeworld, then, is constituted of culturally transmitted interpretations, background convictions and definitions that constitute a common understanding (Habermas, 1984). The lifeworld is imperceptible as it is the "knowledge from within which – without any distance – we live our lives, undergo experiences, speak, and act" (Habermas, 1988/1998: 243). The lifeworld can be conceptualised as a micro world (Ritzer, 2008) in which agencies interact and communicate with a goal to reach understanding and agreement on problematic situations (Habermas, 1984). The way to reach common understanding is through communicative action (Habermas, 1984).

Communicative action is a key concept of Habermas' theory. It is distinguished by Habermas from strategic action in that people do not engage in communication with a view to obtaining success but to reaching understanding. Strategic action is undertaken in situations in which people aim to exert influence *upon* others' decisions; communicative action is undertaken with the aim of reaching an understanding *with* others (Habermas, 1984: 286, original emphasis). To Habermas, these two forms of action are mutually exclusive: one cannot speak with the simultaneous goal of reaching understanding and exerting influence, as the latter involves deception or threat. Communicative action on the contrary is aimed at reaching understanding; it is characterised by cooperation, attuning of respective plans and a common interpretation of the situation (Habermas, 1988/1998).

Reaching such understanding, Habermas continues, is possible if the principles underlying the 'ideal speech situation' are respected. The ideal speech situation is a theoretical concept that represents a kind of communication or discourse in which the better argument wins, not the most powerful participant. Habermas' baseline and political objective is "undistorted communication" or "communication without compulsion" (Ritzer, 2008: 290). The ideal speech situation is a situation in which individuals are unconstrained in their ability to participate, have equal status and equal chances to continue or determine the conversation and all act and speak truthfully and sincerely (Ferrara, 1994; Clegg, 1989). Mark, first, that these traits are manifestly irreconcilable with strategic action. Second, mark the parallel with the kind of communication that restorative justice aims to realise. This parallel becomes especially clear when reading Cooke (1998: 5):

> Thus, Habermas claims, participants in argumentation necessarily suppose, among other things, that they share the common aim of reaching agreement with regard to the validity of the disputed validity claim, that no force except that of the better argument is exerted, that no competent parties have been excluded from the discussion, that no relevant argument has knowingly been suppressed, that participants are using the same linguistic expressions in the same way, and so on.

Reading this quote feels like reading an excerpt from a text elaborating on restorative justice's ideal of how communication in a restorative meeting should take place, though critical voices such as Arrigo (2008) assert that restorativists err in assuming that the creation of an ideal type of communicative action is possible. Arrigo (2008: 479) himself doubts if such "rational, organized, purposeful,

coherent, and unified discourse" can truly be assured in mediation sessions, as human communication is necessarily characterised by inconsistencies, spontaneities and unpredictability.

As for establishing communicative action, Habermas finds fault with the structures steering the lifeworld for imposing constraints on communication. Because of their focus on formality, these structures threaten individuals' capacity to communicate and reach understanding in the lifeworld. Communication is impoverished, rigidified and fragmented because of the system's command over the lifeworld (Ritzer, 2008). This Habermas calls 'the colonization of the life world': it is the *strategic* rationality of the system intruding upon the *communicative* potential in the lifeworld. Habermas (1981) however puts hope in the observation that, as from the late 1960s, active, militant citizens start reacting against the colonisation of the life world.

In restorative justice literature, references to Habermas' work are legion (e.g. Hudson, 1998, 2003a; Mackay, 1998; Mannozzi, 2002). The reason why Habermas' theory of communicative action is popular among restorativists is clear: as restorative justice does, Habermas perceives of citizens as critical and active agents. Habermas' theory and restorative justice philosophy share an aspiration for the empowerment of citizens. Restorative practices such as mediation and conferences strive to fulfil the discursive conditions that were outlined by Habermas in his theory of communicative action (Hudson, 2003a). What is envisaged by restorative justice is "undominated speech" (Braithwaite, 2002b: 88 and 143), that is, "a situation in which people participate without constraint or oppression and are power equals or can equally contribute to the discussion" (Alder, 2000/2003: 124) in order to "create understanding" (Christie, 2010: 118). This ideal indeed resembles the ideal speech situation that Habermas advanced to a high degree. It is the very aim of restorative practices to create a communicative space between the participants, to restore communication between victim and offender (Mannozzi, 2002).

§2.2.2. Braithwaite and Pettit's republican theory of justice

"Non-domination" or "dominion", a concept coined by Braithwaite and Pettit (1990) as part of their republican theory of justice, is a concept much reverted to by restorativists to clarify the concept of empowerment. Braithwaite and Pettit argue that the goal of a criminal justice system should be "the maximization of the dominion of individual people" (p. 54). Dominion refers to the set of rights that every individual disposes of and that should be respected by fellow citizens. It means being able to "enjoy the standard liberties of expression, movement, and association and (…) the usual privileges of ownership" (p. 62). The assurance of these rights is central to dominion: "a suitably assured absence of constraint" does not suffice, what is needed is "a knowledge of that assured absence" (p. 63). This is what makes the difference between freedom as non-domination and freedom as non-

interference: the 'other' should not interfere in anyone else's freedom, but what is more is that everyone should also be *assured* that the other will not. The republican conception of freedom as non-domination urges that the other should not be an enemy to my freedom but an ally, working with me to "assure dominion as a collective good", which presupposes mutual respect and solidarity (Walgrave, 2002b: 209, 2007). Dominion does not refer to non-interference through the absence of others, that is, through loneliness. Instead, it points to the presence of others who refrain from interfering. Perfect liberty, then, does not follow from leading a solitary life; instead it is "exemplified by the condition of citizenship in a free society, a condition under which each is properly safeguarded by the law against the predations of others" (Braithwaite and Pettit, 1990: 57).

The task of a criminal justice system, then, according to Braithwaite and Pettit is to promote dominion and protect it against invasion. This is exactly where restorative justice takes criminal justice to the task: restorativists believe that criminal justice is incapable of reassuring dominion after crime. Crime is a clear intrusion upon dominion (Braithwaite and Pettit, 1990). It does not only undermine the assurance of dominion of the victim of the specific crime; it undermines assurance for the whole community. Fellow citizens see that dominion can be intruded upon, as a consequence of which assurance is lost and large distrust follows (Walgrave, 2002b, 2003). Restoring (the assurance of) dominion after crime presupposes that the reaction that follows crime itself respects dominion: the authorities need to respect the assured rights and freedoms themselves (Braithwaite and Pettit, 1990). Braithwaite and Pettit (1990) in this respect put forward four constraints to reactions to crime. These are (1) parsimony, (2) the checking of power, (3) reprobation and (4) reintegration.

In advancing the principle of *parsimony*, Braithwaite and Pettit head off from the assumption that any intervention that follows crime intrudes upon someone's dominion. The parsimony principle implies that any criminal justice activity therefore should be justified. Parsimony is a plea for less interventionism, for minimalism in criminal justice interventions, and for diversion (as diversion is less intrusive) (Braithwaite, 1995). The *checking of power* is necessary in order to assure dominion; people need to be assured that they will receive suitable treatment. Suitable treatment implies that all are treated equally, that is, that treatment is indiscriminate and devoid of irrationalities. The checks therefore consist of citizens' rights on the one hand (e.g. the right to a fair trial, the right of the innocent not to be punished and the right for appeal) and accountability on the part of the state on the other hand. These should ensure that all citizens are equal before the law.

Reprobation or "being moralizing about criminal threats to dominion" (Braithwaite and Pettit, 1990: 88) relates to creating societal awareness that crime is wrong and that those committing it therefore should feel ashamed. Crime should be subject to disapproval by the community. Also, sentences should be designed so as to raise the offender's awareness of the wrongfulness of his act

and to bring him to shame. Such awareness should not only prevent people from committing crime, it should also help them understand the function of a criminal justice system:

> A second reason why republican theory favours reliance on the socializing rather than the coercive institution, is that it naturally requires that citizens should understand why the criminal justice system does what it does. When a citizen is coerced into not doing something by the imposition of a legal penalty on the activity, he may or may not understand why coercion is imposed. If he does not understand, then the subjective component is [sic] his dominion must be threatened, for he will see himself as subject to randomly imposed coercive power. When on the other hand a citizen is brought to see that the activity is a matter for shame and why it is a matter of shame, the subjective component in his dominion is not jeopardized in the same way. (Braithwaite and Pettit, 1990: 89)

Finally, *reintegration* is advanced as a clear goal for the criminal justice system. Reintegration is aimed not just at the offender but also at the victim: after being devalued by the crime and having lost the assurance of dominion, the victim should be reintegrated. That is done through reprobation, that is, condemnation of the crime and the offender, which should end in apology and restitution or compensation. Having experienced that the community helps those who become victimised, the victim's assurance of dominion should be restored. As to offenders, they should be reintegrated so as to ensure that no restrictions are imposed on their dominion, which should contribute to them refraining from future offending.

§2.2.3. Zimmerman's three components of empowerment

A third interesting perspective on empowerment is found in a recent paper by Aertsen *et al.* (2011). Aertsen and his colleagues discuss the concept of empowerment in restorative justice, the core of their argument being that 'empowerment' implies not merely to be able to express feelings, to participate in meetings or to be given a chance to talk but also to be able to *act upon one's environment*. The authors argue that restorative justice literature largely neglects the last element. Referring to the conceptualisation of the concept of empowerment in community psychology, the authors assert that empowerment does not follow simply from being *offered* information, or being *offered* an opportunity to be heard or to express needs, because such offers do not actively empower victims (note that the authors specifically write about *victims*' empowerment in restorative justice). Based on how empowerment is conceptualised in community psychology (Zimmerman, 1995), the authors discern between three aspects of empowerment: (1) an intrapersonal component, (2) an interactional component and (3) a behavioural component. The first relates to individuals' belief about their ability to determine their own life, that is, about personal competence and self-efficacy. The second relates to people's understanding of the resources they need to achieve a specific goal and the availability of those resources. The third relates to the actions that people can take in order to reach a stipulated goal (e.g. participate in community or neighbourhood organisations, political groups, self-help groups, etcetera), not only on an individual level but also on a social and political level.

Empowerment, in other words, is more than self-confidence: it presupposes active engagement and an opportunity to act to influence one's social and political environment. Real empowerment, then, means that individuals are not mere passive receivers of services; on the contrary, they cannot be said to be 'empowered' unless they have had a real opportunity to *act*. For all restorative justice scholars' stress on human agency, Aertsen *et al.* (2011) state, they have not paid sufficient attention to the behavioural component of empowerment. Whereas restorativists commonly presuppose that individuals are empowered once they regain self-confidence and self-esteem, Aertsen *et al.* (2011) argue that genuine empowerment requires more than rebuilding self-esteem.

§2.3. Empowerment through procedural justice

The three perspectives on empowerment delineated above attest to the fact that restorativists believe that a prerequisite for justice to be perceived to be done by victims and offenders involved in criminal justice is that their need for empowerment is addressed (Zehr, 1990/2005). Empowerment is conceptualised as having the opportunity to *actively* participate in the resolution of the case, as community psychology advances. Empowerment *results* from reaching mutual understanding through communicative action, based on mutual respect and solidarity, in order to make sure that dominion is restored and again assured. In the above arguments lie the reasons why justice according to restorative justice proceeds from experiences of *procedural* justice.

I conclude here the first chapter of this dissertation, to pass to the description of social psychological theories of justice and procedural justice theory in the second and third chapter.

Chapter II. SOCIAL PSYCHOLOGICAL THEORIES OF JUSTICE

Any serious inquiry into the way justice appears in people's lives will eventually come to questions related to procedural justice (Lerner and Whitehead, 1980: 219)

Penal history reads like a chronicle of alternately dominating penal paradigms. These different penal paradigms have been translated into a most assorted range of public reproval practices. The different notions of society on which each of the paradigms was founded have produced various conceptions of justice (Rawls, 1999), which were reflected in the means for dealing with crime. Each of these means mirrored the notion of justice that prevailed at the time, for example, justice as deservingness, justice through restoration, justice through vigilantism, justice as retribution, etcetera. For this reason, penal history has witnessed a shift from vigilante justice to the first applications of corporal punishment and means of incapacitation by state authorities, which was followed by a progressive use of rehabilitative measures, alternative sanctions and the institutionalisation of restorative means of dealing with conflict. For one thing, the above illustrates that justice is not an objective notion, that it is in fact a fluid and malleable notion that is *constructed* by humans (Clayton and Opotow, 2003). In this observation, *i.e.* that new means of handling crime and conflict are based on new notions of justice, also lies the rationale for the current study. Indeed, as reported in the introduction to the dissertation, the restorative justice paradigm strongly bases its interventions on the notion of *procedural justice*. Therefore this second chapter is devoted to the study of the social psychological theory of procedural justice.

This chapter has been divided into five sections. The first section offers a brief overview of the first theories of justice that were produced by philosophers (John Rawls) and psychologists (John Stacey Adams, Gerald Leventhal). A description of the key points of these theories is offered in order to facilitate the apprehension of the models of justice that will be examined in the subsequent sections of the chapter. The second section will introduce the reader to two main distinctions between the justice models that are central to this dissertation, *i.e.* the difference between outcome-based models of justice and process-based models of justice and the difference between instrumental and normative perspectives on justice. In the third section, attention is given to two outcome-based models of justice, whereas the fourth section is devoted to process-based models of justice. The process-based models of justice are all based on, and further elaborate on, the theory of procedural justice. Throughout the description of the different models, the reader will witness an evolution within social justice research from predominantly outcome-based models of justice to models that stress the importance of process-related factors in justice judgements. The latter models provide the

basis for current-day social justice research, and for restorative justice theory and practice. The chapter is concluded with a summary and a number of concluding observations; these will be presented in section five.

Before setting of, two preliminary remarks are in order. First, mark that this second chapter does not present a normative approach to the different models of justice reviewed throughout the chapter. The aim is purely to describe the models. I aspire to give an account of the models and to introduce the reader to their main assertions, but will not at this point express value judgements on these models. I will not elaborate on which justice model is 'better' or on what a just procedure is or should be. This does not prevent, of course, from providing the reader with an insight on the critics that have been raised on the models and on the merits that have been ascribed to them.

A second preliminary remark relates to the fact that the models presented in this chapter are examined with a focus on their assertions about the individual person, about individual judgements, feelings and actions. This means that the models will be described with a focus on their claims concerning justice on the micro level. The models' claims with respect to perceptions of justice on a macro level are not at the centre of this chapter, though they may be mentioned throughout the discussion if related to the micro level or if imperative in order to fully comprehend the respective models.

SECTION I. PREDECESSORS

Introduction

In this first section, three early justice scholars' views are illustrated by way of introduction to the study of fairness and procedural justice. The evolution towards the study of procedural aspects of conflict resolution will become clear as I describe each scholar's contribution to the field of the study of fairness. The choice of scholars was based upon the frequency with which they are cited by those who developed procedural justice theory. The scholars that will be discussed are J. Stacey Adams (a psychologist) (§1), John Rawls (a philosopher) (§2) and Gerald S. Leventhal (a psychologist) (§3).

§1. Equity theory – J. Stacey Adams

§1.1. Description of the model

John Stacey Adams presented equity theory in 1965. Adams finds fault with social psychologists for, while investigating reciprocal behaviour and exchange issues, failing to properly explore *justice judgements* on these exchange processes. Adams strives to develop a theory that specifies both the antecedents and the consequences of perceived (in)justice in exchange processes, using employee-employer interactions as a primary example of social exchanges but emphasising the possibility of applying the theory to the most diverse social exchange interactions.

As for the *origins of justice judgements*, Adams (1965) advances the concept 'inequity'. He argues that inequity is perceived in an exchange process when one of the parties involved notices that (s)he is over- or under-rewarded by the exchange. This is a point of view inspired by the concept of relative deprivation. (In)equity according to Adams is defined by the ratio or proportion of each person's outcome to their input. As long as the parties involved in the exchange process perceive these ratios as equal, no inequity is experienced, since equal ratios imply that each person has received the outcome (s)he deserves in terms of his/her input. For this reason, there is no harm in situations where one party has received more profit than the other, if this person has invested more than the other. However, when an inequality is perceived between the ratios, inequity will be perceived, because unequal ratios imply that the parties believe that one or both of them has/have not received the outcome that they deserved.

Equity according to equity theory is in the eye of the beholder: as clearly put forward by Adams (1965), Adams and Freedman (1976) and Walster *et al.* (1976: 4), "an individual's perception of how equitable a relationship is will depend on *his* assessment of the value and relevance of the various participants' inputs and outcomes" (emphasis in original). (In)equity is a function of participants' *perceptions* of their own and other people's inputs and outcomes. Since (in)equity is a matter of

perceptions, it is possible for two people in an exchange process to both experience disadvantageous inequity, for one person to feel inequitably treated while another in the same situation would not, or for the parties to dispute each other's perceptions of (in)equity.

Most importantly, perceptions of inequity appear not only with under-rewarded people, but also with the beneficiaries of inequity. This is explained by the advantageous situation's likeliness to produce feelings of guilt. Those who are given more than their share of reward experience advantageous inequity; those who are under-rewarded experience disadvantageous inequity. Yet Adams admits that the threshold for experiencing advantageous inequity is higher than the threshold for experiencing disadvantageous inequity.

Adams as said does not limit his theory to the antecedents of perceptions of (in)justice; he adds to existing research on relative deprivation and distributive justice his theoretical view on the *consequences* of experiencing injustice. He describes how inequity results in dissatisfaction, which he designates with the term 'inequity distress' (Adams and Freedman, 1976). The experience of inequity distress, Adams writes, motivates people to eliminate or reduce the situation of inequity. As to the *means* of reducing inequity, Adams (1965) and Walster *et al.* (1976) advance three categories of methods. First are a number of methods for restoring 'psychological equity'. These are methods for cognitively distorting one's own and/or the other person's inputs and outcomes (e.g. denial of responsibility, derogation of the victim or minimisation of the victim's suffering). Second, a number of methods can be used to restore 'actual equity'. These come down to altering one's own and/or the other person's inputs and outcomes in order to influence the outcome-input ratio (e.g. compensation of the victim, self-deprivation). Third, a number of practical strategies are advanced. These include the person experiencing inequity leaving the field or changing the object of comparison.

§1.2. Contribution to research on fairness

Equity theory has provided the basis for an amalgam of research on reactions to inequity (Hegtvedt and Cook, 2001), focusing on a variety of subject matters, e.g. on allocation decisions, on workplace settings, on team behaviour, on family relations and on emotions. Lind and Tyler (1988) have praised equity theory's assertion that even if their situation has changed for the better, people who experience inequity will behave to reduce inequity and forego their own advantage in the interest of fairness. Similar effects soon appeared in procedural justice research.

But most studies reacted *against* equity theory rather than elaborate on the theory (Folger, 1984). Leventhal (1980) and Folger (1984) for example have argued that equity theory defines fairness exclusively in terms of the distribution of outcomes. It considers only the final distribution of rewards and punishments, neglecting the procedures that generated the distribution. Deutsch (1975),

Lerner (1975), Leventhal (1976a), Utne and Kidd (1980) and Mikula (1980) have added to this the fact that the equity norm that equity theory has used to explain justice judgements is only one of many possible justice norms. As a result, Folger (1984) has asserted, it does not give a complete account of justice reasoning. Moreover, according to Utne and Kidd (1980), equity theory fails to offer an exhaustive overview of strategies to reduce inequity; the authors state that people need not always distort their view of reality or objectively adjust outcomes and inputs to restore equity. For these reasons, equity theory was not considered a fully-fledged theory of justice.

§2. Justice as fairness – John Rawls

§2.1. Description of the model

John Rawls' political philosophy is generally acknowledged to have delivered the first elaborate and mature theory of justice. Rawls assumes that society is characterised by conflicts of interest on the appropriate distribution of the benefits and burdens of social cooperation. Hence he is convinced of a need for principles of justice to govern society, and to in particular specify the relevant rules for determining the division of advantages. The primary subject of justice in Rawls' view is "the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages" (1971: 6). A conception of social justice, then, "is to be regarded as providing in the first instance a standard whereby the distributive aspects of the basic structure of society are to be assessed" (1971: 8). The absence of such a standard, Rawls argues, would lead to distrust, resentment, suspicion and hostility eventually corroding the ties of civility.

Rawls sets up a thought experiment, replacing the existing social contract by an initial situation, called "the original position". In this original position, rational men in a hypothetical situation of equal liberty, who do not know what their future position in society will be, are invited to reflect and decide on what is just and unjust, and thus determine the principles of justice according to which social order should be established if it would not yet have been established. The principles that free and rational persons concerned to further their own interests would come to accept in such an original position, Rawls argues, would be such that once society is established, they would even be acceptable to the least privileged party. These are the principles that according to Rawls should lead the major social institutions when distributing fundamental rights and duties among citizens.

The major tenets of Rawls' hypothetical thought experiment are, first, that all people involved in decision making are equal, and, second, that no person at the time of decision making on these principles can foresee which position he will take in society at a later stage (this vital feature is what Rawls has termed 'the veil of ignorance'). Behind the veil of ignorance, deprived of information on what their economic and social prospects will be once society is established, equal people will agree

on principles of justice that will benefit all. As the principles of justice would be agreed upon in an initial situation that is fair, Rawls uses the term *justice as fairness*. He explicitly warns not to interpret justice as fairness as implying that justice and fairness are identical. Rather, it means that the principles of justice should be those principles to which free and equal people assent under circumstances that are fair. The original position, in which the group members are on equal terms and oblivious of their future prospects, provides one such fair situation. A society that is governed by the principles adopted under such circumstances will enjoy the willing cooperation of its members in society and their voluntary compliance with its rules, for these principles are the ones that every member of society would agree upon if they found themselves in the original position.

Rawls believes that in the original position, two principles of justice would be agreed upon. He describes them as follows (Rawls, 1999: 266):

First principle: Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

Second principle: Social and economic inequalities are to be arranged so that they are both:

(a) To the greatest benefit of the least advantaged, consistent with the just savings principle, and

(b) Attached to offices and positions open to all under conditions of fair equality of opportunity.

Mark that Rawls defines justice not as 'a proper balance between competing claims', but as *a set of principles* that should work to identify the relevant considerations for determining this balance. Rawls, in other words, pays attention not only to the distribution of outcomes; he also takes into account the manner in which the distribution should be decided upon. In so doing, he provided for an indispensable precondition for Thibaut and Walker to develop a viable conception of justice based on procedural rather than outcome concerns. Indeed one of the bread and butter issues of *A Theory of Justice* is Rawls' distinction between perfect procedural justice, imperfect procedural justice and pure procedural justice. Even if the distinction has been criticised (see e.g. Nelson, 1980; Gustafsson, 2004; Morss, 2004), it did, as Nelson (1980) acknowledges, advance the understanding of the function and importance of procedures.

Rawls uses *perfect* procedural justice as a label for decision making processes in which, first, an independent criterion for what a fair division is, is available, and, second, there is a possibility for devising a procedure *guaranteed* to lead to a fair division. The criterion is defined separately from and prior to the procedure. Cases of perfect procedural justice occur, then, when a procedure is devised that is sure to lead to the desired outcome (as specified by the criterion). Cases of *imperfect* procedural justice too are characterised by the availability of an independent criterion as described above, but even if the rules are followed carefully and the procedures are conducted in a fair and correct

manner, they may reach the wrong outcome considering the criterion specified beforehand. *Pure* procedural justice, then, is obtained when a fair procedure is available that, provided it is properly followed, makes sure the outcome is likewise fair – whatever it might be. What makes the final outcome fair is that it results from the fair procedure. Pure procedural justice differs from perfect procedural justice in that there is no independent specification for what constitutes a fair outcome. Fairness as in pure procedural justice is defined solely in terms of the procedures applied, and fair outcomes result *automatically* and *necessarily* from these procedures.

§2.2. Contribution to research on fairness

Rawls laid the first stones for procedural justice theory because he abandoned the material description of fairness (*i.e.* fairness defined as related to physical outcome, as in equity theory) and suggested instead that fairness is to be understood as resulting from the *procedures* governing social institutions. This is not to deny, however, that in my view a marked difference with more recent work on procedural justice remains. Rawls, though tagged as a "process theorist" (Nelson, 1980: 511), throughout his 1971 book persistently speaks of "the distribution of the benefits and burdens of social cooperation" (p. 5) and "the division of advantages" (p. 16). Rawls in fact creates principles for allocation. Despite the fact that he explicitly takes an interest in the procedural part of decision making, he does in my opinion still proceed from an outcome-related vision of justice. The basic question of his inquiry, as Thibaut and Walker (1975) have rightly pointed out, is: *what* constitutes a fair division of resources? Here a crucial distinction with recent writings on procedural justice becomes apparent. The first priority of procedural justice research today is not the allocation of benefits and burdens; current day research poses questions about how to make people feel more comfortable about the decision making process and about how they should be treated throughout the process. The interpersonal aspect of decision making and the question of *how* people decide whether a given division of resources is fair and *why* they care about justice, are deemed more important than *what* constitutes a fair division or allocation.

Notwithstanding these critical sounds, Lind and Tyler (1988) have gratefully welcomed Rawls' theorising. They in particular accredited his suggestion that *procedural* fairness might be an important, if not primary factor in justice judgements. According to Nelson (1980: 503), the idea of *pure* procedural justice in particular has importance, for this is the one involving the idea "that in some cases, following rules or procedures automatically renders an outcome just. (…) It is as if the procedure by itself makes the outcome just".

Attention in justice research at this juncture had evolved markedly compared to the early research of J. Stacey Adams, by now singling out *procedural* components of the justice concept instead

of paying attention solely to the outcome-related components of justice. Equity theory evaluates fairness merely in relation to distributions; Rawls' concept of pure procedural justice suggests that perceptions of fairness are also rooted in the justice of procedures. The third important predecessor of justice research continued this line of reasoning.

§3. The justice judgment model – Gerald S. Leventhal

§3.1. Description of the model

Gerald Leventhal's main contributions to social justice research are situated in the late 1970s. Leventhal (1976a, 1976b, 1980) pinpoints equity theory's complete lack of attention for the procedures determining the distributions of rewards; he himself is convinced that in order to determine the justice of a distribution, judgements on deservingness are insufficient. Perceptions of justice, Leventhal asserts, also involve questions of *procedural* fairness.

Leventhal (1976a) introduces the 'justice judgment model' and, with it, the notion 'justice rules'. According to the justice judgment model, an individual's perception of fairness is based on justice rules (Leventhal *et al.*, 1980). A justice rule is "an individual's belief that a distribution of outcomes, or procedure for distributing outcomes, is fair and appropriate when it satisfies certain criteria" (Leventhal, 1980: 30). The model discriminates between two categories of justice rules, *i.e.* distribution rules and procedural rules. A *distribution rule* is an individual's basic criterion for evaluating the fairness of a distribution of resources. Examples are the matching of rewards to contributions (this would be a 'contributions rule', rather equivalent to equity theory), to needs (a 'needs rule'), to the wish to receive as much as possible (a rule of 'justified self-interest'), to legal rules (a 'legality rule'), to social rank (a 'status rule') or to the principle of dividing rewards equally (the 'equality rule'). *Procedural rules* concern the procedural factors that impact upon the perceived fairness of allocation behaviour (Leventhal, 1980). Prompted by a lack of studies on procedural fairness, Leventhal in 1980 defines procedural rules himself (Leventhal, 1980: 40-45). He advances the following six rules:

i. The consistency rule

   A first aspect of procedures on which individuals may base judgements on procedural fairness is the consistency of these procedures across persons and over time: similar procedures should be used for all potential receivers of rewards and these should be stable over time. Lack of consistency may lead to perceptions of unfairness.

ii. The bias-suppression rule

Another aspect shaping perceptions of procedural fairness is the absence of bias in the decision maker. "Personal self-interest and blind allegiance to narrow preconceptions" should be avoided for they may lead to non-acceptance of the procedure.

iii. The accuracy rule

The accuracy rule demands for an allocative process to be based "on as much good information and informed opinion as possible". The rule requests methods of gathering and processing information to proceed "with a minimum of error".

iv. The correctability rule

This fourth rule predicts that allocation procedures lacking opportunities to appeal decisions will be perceived as unfair by those involved. The rule applies to all stages of the allocation procedure; moreover, distinguishing it from the other rules, the correctability rule remains applicable *after* the allocation has been decided upon.

v. The representativeness rule

The fifth rule requires procedures to respect the basic values and concerns "of important subgroups in the population of individuals affected by the allocative process". Procedures stopping short of awarding due attention to subgroups' opinions may be perceived as unfair.

vi. The ethicality rule

The ethicality rule states that procedures will be perceived as unfair when these violate "personal standards of ethics and morality". Allocative procedures that are not compatible with an individual's moral and ethical values may be perceived as unfair.

These six procedural fairness criteria focus Leventhal's preliminary definition of procedural fairness: "procedural fairness exists when information about receivers is collected and utitilized properly and when there is an appropriate division of control over the allocation process" (Leventhal, 1976a: 233). As he also advances various distributive fairness rules, Leventhal's justice judgment model is a multidimensional one: people use different criteria on different occasions, at times reinforcing each other, at other times coalescing. They do not, Leventhal strongly states, base fairness judgements on one single criterion.

§3.2. Contribution to research on fairness

To Gerald Leventhal the early advocates of procedural justice owe two vital ingredients of the conceptual improvement of the notion 'procedural justice', *i.e.* (1) the finding that people base perceptions of fairness on various rules, "rather than on a single rule as employed in equity theory" (Leventhal, 1980: 31) and (2) the identification of so-called 'justice rules', that is, rules for evaluating procedural fairness. But Leventhal has been criticised because his procedural rules were "largely the result of his intuition and speculation about what makes a procedure fair" (Lind and Tyler, 1988: 131). Though his six criteria were tentative and some of them have been borne out by subsequent empirical research (e.g. Barrett-Howard and Tyler, 1986), they have become widely renowned as the first ones demonstrating that the use of disreputable methods influences judgements on fairness. Of course John Rawls too should be given credit for this, but his principles of justice were considerably more abstract and thus less easily applicable when empirical research on justice was started up in the 1970s. Therefore it is Leventhal's set of criteria that appeared in many of the empirical studies marking the early years of procedural justice research (e.g. Tyler, 1990).

Do note, first, that Leventhal pays no attention to the interpersonal aspects of decision making (e.g. receiving respect). Second, Leventhal's writings still strongly focus on the analysis of *allocation* behaviour and on the *instrumental* factors that drive justice judgements (Gonzalez and Tyler, 2007); this can also be observed in Thibaut and Walker's first experiments. Leventhal still considers outcomes to be more salient in determining fairness judgements than procedures (Leventhal *et al.*, 1980). He considers people in general less attentive to procedures than to outcomes and argues that "any allocative procedure that appears to block the attainment of desirable distributions will arouse negative attitudes" (Leventhal *et al.*, 1980: 190). Leventhal as such did not firmly opt for the procedural point of view yet, but his model did provide the foundation for considering procedural fairness to have independent effects on justice judgements (Gonzalez and Tyler, 2007).

SECTION II. DIFFERENTIATIONS BETWEEN JUSTICE MODELS

Introduction

In the first section of this chapter an evolution was sketched from (a) the belief that justice judgements are entirely determined by the outcome of an allocation and (b) the single purpose of the study of social justice being the facilitation of the allocation of outcomes to (a) the discovery of the importance of procedural elements for justice judgements and (b) the purpose of the study of justice being to create allocative procedures that are acceptable whatever the outcome. The remainder of this chapter is directed at the study of the main theories of justice put forward by social psychologists, and as they are applied to one particular kind of social experience, *i.e.* court cases. As Karstedt (1998) has rightly observed, these theories are much less abstract than the predecessors' models. Also, they are driven by clear, concrete questions, answers to which were sought through empirical research, which distinguishes them from the purely theoretical predecessor models.

These main theories of justice can be distinguished into four types, based on two distinctions. A first distinction is between outcome-based models of justice and process-based models of justice (see §1). It is founded upon different beliefs on the reason why procedures play a role to people evaluating their experiences in terms of fairness. A second differentiation is between instrumental and normative models of justice (see §2). This distinction is based upon different images of the individual (*i.e.* do people shape their behaviour in response to external or internal motivations?). The main theories of justice that will be discussed throughout this chapter will at the end of this section be put in a grid crossing these two dimensions in order to make clear whether they are outcome-based or process-based and whether they are instrumental or normative models of justice (§3).

§1. Outcome vs. process perspective: bases of evaluation

A first differentiation between models of justice judgements is between outcome-based models and process-based models of justice. Each of the models that will be discussed below (except for distributive justice theory) agrees to the importance of procedural elements in the assessment of fairness, but they show no consensus on the (psychological) processes from which these procedural elements derive their importance. Figure II-I by Tyler (1990: 75) on page 52 illustrates the difference.

Advocates of the outcome-based approach are convinced that procedural elements are important *only because they accord people an ability to influence outcomes*. Procedures are considered important (only) because they lead parties to believe that they have a certain degree of control over the outcome. If people in a dispute are given a chance to voice their opinion, for example, outcome-based models would assert that they consider this chance valuable because it allows them to

influence the final distribution. In the end, then, outcomes are thought to determine justice judgements.

Authors in favour of a process-based approach regard the importance of procedural elements as independent of the outcome of procedures. Procedural elements are assumed to have a value of their own and therefore to influence justice judgements *independent of whether they allow control over the outcome.* The mere opportunity to express one's opinion, for example, according to the process-based approach is sufficient to cause parties to positively assess an experience.

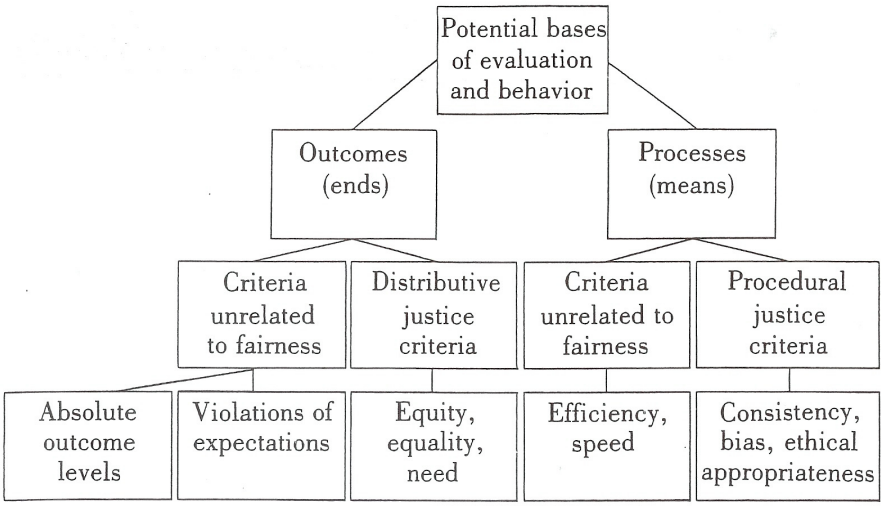

Figure II-I: Outcome vs. process-based models of fairness
(Source: Tyler, 1990: 75)

§2. Instrumental vs. normative perspective: bases of behaviour

A second differentiation between different models of justice is between instrumental and normative perspectives on human behaviour. The most studied type of human behaviour in the legal arena is compliant behaviour (compliance with the law). The instrumental perspective is built on the assumption that human behaviour is motivated by rewards and punishment in the external environment. People are believed to shape their behaviour in response to the stimulus of an external incitement (a reward or punishment). They are thought to act in accordance with the law not because they feel they ought to; the reason they do is because of the potential threat of punishment. The *favourability of the outcome* defines people's behaviour. The instrumental perspective underlies deterrence perspectives: in order to obtain compliance with the criminal law, the severity of punishment for committing a crime and the rewards for complying with the law are increased.

The normative perspective is grounded on the belief that people feel personally committed to act in certain ways. People are thought to behave in certain (socially desirable or socially disapproved) ways out of innate motivations. They voluntarily obey the law, irrespective of the risk for punishment, because they consider doing so is just and moral. Yet one important condition for them to do so is fairness in social interactions. People will no longer feel committed to respect the law if those reinforcing it fail to behave fair. According to the normative perspective, people react to social experiences in terms of the *fairness of the outcomes* they receive (distributive justice) and/or the *fairness of the procedures* that were used to arrive at those outcomes (procedural justice). It perceives fairness as "a desired quality in its own right" (Lind and Tyler, 1988: 64; Tyler, 1990).

§3. Summarising table of the main theories of justice

I generated a table crossing the two differentiations delineated above (Table II-I below). The grid categorises the main theories of justice, each of which will be described below. Mark that normative theories of justice are not necessarily based on a process perspective; outcome-based models may just as well be based on a normative standpoint. I have included in the grid the names of the founders of each of the models.

Table II-I: Categorisation of the main theories of justice on two dimensions

	Outcome-based	Process-based
Instrumental	Self-interest model of procedural justice *Thibaut & Walker*	
Normative	Distributive justice	Group-value model of procedural justice *Lind & Tyler* Relational model of authority *Tyler & Lind* Process-based model of regulation *Tyler & Huo* Group engagement model of procedural justice *Tyler & Blader*

Table II-II below lists the main questions driving the theories. This table provides a useful overview that may serve as a guide throughout the next sections of this chapter. Mark that distributive justice theory is not included in this table; this is because the theories at the centre of the dissertation are those theories that have spent attention to the importance of procedures to fairness.

Table II-II: Chief questions posed by the main theories of justice

	Outcome-based	Process-based	Main question
Instrumental	Self-interest model		How do people allocate outcomes?
Normative		Group-value model	What are the antecedents of justice judgements?
		Relational model	Why do people obey authorities?
		Process-based model	Why do people accept authorities' decisions?
		Group engagement model	Why do people engage in groups?

SECTION III. OUTCOME-BASED MODELS OF JUSTICE

Introduction

In this third section, I will provide a description of the two main outcome-based models of justice. These are distributive justice theory (§1) and the self-interest model of procedural justice (§2).

§1. Distributive justice

Distributive justice theory provides the context in which procedural justice theory was developed. In fact, the importance of social justice issues was first demonstrated in the literature on distributive justice, not the literature on procedural justice (Tyler and Huo, 2002). At the moment that the first principles of procedural justice were advanced, theorising on justice had been focusing mainly on the principles of distributive justice. The theory of distributive justice implies that people evaluate experiences and distribution processes in terms of the fairness of the outcome that they have received. Distributive justice is a normative theory of justice: it focuses on the fairness of outcomes, not on their favourability (Tyler, 1990) and as such is different from instrumental self-interest theories of justice. I will only scratch the surface of the theory of distributive justice here; for a thorough review of research on the matter I refer to Roemer (1996) and Hegtvedt and Cook (2001).

When applied to the macro level of society, distributive justice concerns justice principles such as utilitarianism (the greatest good for the greatest number) and egalitarianism (all people are equal and should thus have equal opportunities to reach economic prosperity, or, all people should have equal wealth) (Roemer, 1996). This dissertation however is concerned with the application of distributive justice principles on a micro level. Looking at distributive justice literature, then, several justice principles have been advanced in order to assess the fairness of outcomes; principles of equity, equality and need in particular have dominated theorising on distributive justice.

Above I shortly introduced *equity* theory as advanced by John Stacey Adams in 1965. Early research on the distribution of rewards and thus on distributive justice built upon the concept of *equity*, evaluating whether everyone received what (s)he deserved in light of his/her contribution to the common good. For this reason, even today distributive justice is (still) sometimes equalled to "economic justice" (Fleischacker, 2004: 1). Soon however awareness grew that issues of justice also could arise in noneconomic situations (Deutsch, 1975) and that the principle of equity did not suffice to explain people's reactions to (non-economic) allocation decisions. *Equality* was advanced as a new justice principle, one that departs from the egalitarian proposition that all people are equal and is therefore based on the "prima facie assumption that all people may legitimately make the same claims on social resources" (Hochschild, 1981: 46). Strict equality, then, implies that "all community

members deserve equal amounts of the good being divided" and, consequently, that "all members should sacrifice equally when necessary" (Hochschild, 1981: 52). Finally, a *needs* rule has been advanced; Fleischacker (2004: 2) asserts that distributive justice in its modern form refers to "a distribution of resources that meets everyone's needs", independent of merit. Researchers, then, have come to realise that "there are multiple justice principles, not one" (Hegtvedt and Cook, 2001: 94)

Miller (1999: 78) wrote that people apply different principles about fair distribution in different contexts; they may switch among principles of desert, need, and equality. Specifically, people are expected to use the equity rule in economic, work-related situations. An equality rule is more likely to be applied in situations in which people want to preserve group harmony and solidarity, and a needs rule to determine allocation behaviour in caring-oriented groups and situations focusing on social welfare (Deutsch, 1975; Miller, 1999; Hegtvedt and Cook, 2001). However there may still be exceptions. For example, competitive employees were found to be more likely to use an equity rule than cooperative workers, who are more inclined to apply an equality rule (Hegtvedt and Cook, 2001). Also, when different principles are thought to apply to a situation, they may conflict. For example, some argue, based on an ethics of care, that in order to realise distributive justice, it may be necessary to introduce unequal treatment, e.g. by taxing those with high incomes more steeply than those with low incomes (Slote, 2007).

Distributive justice is the only theory of justice that is both a normative theory and an outcome-oriented theory of justice; it is concerned with the fairness of outcomes. I will not dig into the theory any further since this dissertation's interest lies especially in theories of procedural justice.

§2. The self-interest model of procedural justice

§2.1. The initial theory by Thibaut and Walker

§2.1.1. Introduction

Even though Rawls and Leventhal, described in the predecessors section above, had already started to unveil the importance of procedural elements of decision making to fairness judgements, John Thibaut (a social psychologist) and Laurens Walker (a law professor) were not strutting in borrowed plumes when they presented procedural justice theory in the mid-1970s. To be sure, by the time they worked out procedural justice theory, the idea that procedural fairness is a major concern for people involved in disputes was a well-established fact. But Thibaut and Walker were the first to provide empirical evidence for the statement that judgements on the fairness of allocations are not determined exclusively by whether the allocation has put an individual in a winning or losing position but also by the method used for reaching the decision.

§2.1.2. The peaceful resolution of conflicts

Thibaut and Walker's work on procedural justice derives from a concern to create non-violent methods for resolving interpersonal conflicts and group disputes (as a third option besides aggression and conflict avoidance). They focus not on informal modes of conflict resolution but on institutional modes of conflict resolution, the most vital of which according to the authors are legal processes "because the courts and similar agencies constitute the principal formal device for the large-scale solution of social disputes. It follows that the procedures of the courts have much potential for creating widespread justice or injustice" (Thibaut and Walker, 1975: 1). Thibaut and Walker accordingly engage in the study of the design of systems of legal decision making and as a result necessarily raise the question: "which procedures are just?" The answer to this question Thibaut and Walker have sought through a series of laboratory experiments simulating decision making in the advertising business, business espionage and legal disputes. The findings of these experiments were bundled in the 1975 founding book *Procedural Justice. A Psychological Analysis*.

If Thibaut and Walker's 1975 book consisted of a number of chapters describing several particular experiments "with occasional speculation about more general issues", as the authors themselves write (1975: 541), in a 1978 paper they put forward a general theory of procedure for resolving conflicts. They focused on legal procedures in particular, confirming though that the integrated theory was intended to apply to all situations of interpersonal conflict. In the following paragraphs, the findings of the 1975 experiments and the theory put forth in 1978 will be presented.

§2.1.3. Bringing about justice vs. discovering truth

Thibaut and Walker (1978) take off by discerning conflicts with the objective of realising 'justice' in allocations of outcomes from conflicts about 'truth'. The latter are typically scientific conflicts, in which an objective truth needs to be determined. These are conflicts involving high cognitive conflict but low conflict of interest. The parties' interests coincide: all are interested in a resolution and are fully aware that the resolution will serve all parties' interests. These conflicts, the authors suggest, should be handled through an autocratic procedure, that is, a procedure which vests almost all control over the resolution of the conflict in a third party.

Solutions to conflicts about the allocation of outcomes, however, are characterised by low cognitive conflict but high conflict of interest. These are the conflicts with which the legal system is concerned[12]; solutions to these conflicts should achieve justice. The *type* of justice that Thibaut and

[12] Thibaut and Walker (1978: 545) admit that fact-finding is an important element of legal proceedings too, but state that "where resolution of the conflict of interest is primary, and the cognitive conflict has significance only in

Walker envisage is *distributive* justice since "the main business of the legal process, our special interest, is the apportionment of outcomes" (Thibaut and Walker, 1978: 542). In Thibaut and Walker's perception, distributive justice "is attained when the ultimate outcomes are distributed to contending parties in proportion to their respective contributions or inputs to the transaction underlying the dispute" (Thibaut and Walker, 1978: 542) – note the parallel with equity theory. In contradiction to conflicts about truth, conflicts about justice involve a maximum conflict of interest: any solution will satisfy the interests of only one party. A win-win situation in the resolution of conflicts of this type is impossible to attain. This is Thibaut and Walker's starting position.

The objective of a given conflict (justice in case of a conflict of interests, truth in case of a cognitive conflict), Thibaut and Walker (1978) go on, determines the type of rules that should govern the resolution process. In conflicts where justice is the objective – I will not discuss conflicts about truth any further as this dissertation focuses on legal disputes –, Thibaut and Walker argue, the type of justice to be achieved is distributive justice. At first sight, Thibaut and Walker in their 1978 work seem concerned only with distributive justice, while they are of course generally said to be the founding fathers of procedural justice theory. This apparent inconsistency may be explained by these scholars' view that "it is only when allocation is in dispute that procedures are necessary and only then, therefore, does the question of procedural justice arise" (Thibaut and Walker, 1975: 3). Thibaut and Walker state that when parties to an allocation spontaneously agree on the allocation, no special procedures are needed. In other words, Thibaut and Walker seem to have bumped into the significance of procedural justice *while seeking for methods to solve allocation problems*, that is, while trying to discover how to achieve *distributive* justice. This most probably explains the fact that their final theory of procedural justice is an outcome-based theory of justice.

§2.1.4. The optimal distribution of control

The essential of Thibaut and Walker's theory is their view on the antecedent of distributive and procedural justice. According to Thibaut and Walker, *the optimal distribution of control* between the parties in a dispute and the third party settling the dispute is the essential element that any procedure should safeguard in order to realise justice. According to Thibaut and Walker (1975, 1978: 546), there are two types of control: decision control ("the degree to which any one of the participants may unilaterally determine the outcome of the dispute") and process control ("control over the development and selection of information that will constitute the basis for resolving the dispute"). The crucial element however is not the absolute degree to which the parties involved possess process

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contributing to or leading to a resolution of that interest conflict, the objective is "justice"".

control and/or decision control; the important factor is the *distribution* of control between the parties and the third party. Thibaut and Walker labelled this 'the control relationship'. In their 1978 work they describe this relationship only with respect to distributive justice; in 1975 however they already asserted that the optimal distribution of control is a key requirement for procedural justice too.

The control relationship serves as a basis for Thibaut and Walker (1975, 1978) to distinguish between five procedural systems, ranging from a system providing full third-party decision control with no process control for the parties, to complete control (process and decision control) being allocated to the parties. Thibaut and Walker suggest seeing these systems as placed on a continuum of decreasing third-party control over decision making. In an autocratic system of decision making (1), the parties have no control at all: the third party decides on the dispute without the participants having any say in the process leading to the decision. In a system of arbitration (2), participants are allowed process control in that they are permitted to present evidence, but decision control remains with the third party. In a moot proceeding (3), additional control is vested in the parties in that they need to agree with any decision the third party makes *and* to a certain extent share control over the process with the third party. In a mediation situation (4), a third party remains present, but process and decision control are assigned mainly to the parties. In a bilateral bargaining situation (5), finally, no third party is present; the parties to the dispute possess full process and decision control.

§2.1.5. The need for third-party intervention

Given the importance that Thibaut and Walker attach to the control relationship, one might surmise that the authors would contend that parties to a conflict prefer those procedures in which they possess both a maximum amount of process control and a maximum amount of decision control over any other procedure. Yet they found that litigants are more concerned with having process control than with having decision control, and in fact found that a number of factors make disputants prefer (greater) intervention of a third party. In particular, they found that people's preferences for third-party intervention depend on (the joint effects of) three factors:

i. Temporal urgency
   Disputants are more likely to give up control and call for an intervention of a third party when time pressure necessitates a decision to be made quickly; the exertion of process control by the parties would delay decision making.

ii. The presence or absence of a pre-existing standard for judging each party's claim
   If a pre-existing standard is available for resolving the conflict, it can be readily applied to the dispute by a third party. Therefore, no extensive party involvement is required. If such a

standard is not available, however, the party's aspirations to create an ad hoc standard will make them avoid third-party intervention.

iii. Outcome correspondence

Outcome correspondence refers to the relationship between the parties' interests. A noncorrespondent relationship exists when the parties' interests are radically opposed. Outcomes can never serve both parties' interests; a win-lose situation is thus unavoidable. The settlement of such conflicts necessitates third-party decision making, as the parties are unlikely to come to an agreement by themselves. In correspondent relationships, the parties share an interest in a correct solution. Any solution will serve them both. These conflicts are easier to resolve than those marked by noncorrespondent interests and therefore allow for the reduction of third-party control.

Thibaut and Walker conclude that, as a prime example of individuals involved in noncorrespondent relationships, parties to legal conflicts prefer to confer decision control to a third party. Their opposite interests drive a desire for process control but prevent them from reaching consensus on an agreement and thus require third-party enforcement of a decision (e.g. by a court).

However, this is not the complete story. Given the centrality of the control concept to Thibaut and Walker's theory, a more meticulous explanation of why people are prepared to relinquish outcome control is needed. One should start with the observation that the self-interest model is based on an egocentric image of the person: it suggests that people want control over decisions that will affect them out of a concern for the consequences of the decision on their self-interest. People are considered to do their utmost to attain personal profit maximisation. The thesis that people in social interactions try to achieve maximum personal benefit is not an unusual one; it lies at the root of many economic, sociological and psychological models. Accomplishing these personal goals of profit maximisation requires people to strive for control over decisions.

At first glance, this self-interested conception of people is inconsistent with Thibaut and Walker's these that individuals are concerned with the fairness of proceedings. Yet the self-interest model does link both through the logic of long-term gain: people join a group and remain in that group because they believe it will make them gain *in the long run* (Lind and Tyler, 1988: 223). Individuals are selfish, but at some point they will find themselves in situations in which their own short-term selfish desires and preferences oppose others' desires and therefore may need to be suppressed; if not, the other individual may leave the group. This would be highly undesirable because individuals may not achieve any profit without other group members' cooperation.

Therefore, if people are not awarded decision control or when it is not possible for them to exert decision control (e.g. because of radically opposing interests), they at least want to be able to check on the procedures through which the decisions affecting them are made, and require these to be fair. As Lind and Tyler (1988: 223-224) say: "having decided to seek long-term gain from group membership, how can people assure that they actually will benefit in the long run from group membership? One way is to demand fairness in the procedures by which decisions are made". Individuals realise that cooperation will benefit them in the long run more than competition will. But they can only be sure that they will actually be able to benefit from group membership (*i.e.*, that long-term gain can be expected regardless of the presence of short-term gain) when they are assured that the procedures used to make decisions are fair.

Considering this, Thibaut and Walker's conclusion that if a procedural system is meant to achieve justice, it is not decision control but process control which should first and foremost be assigned to the disputants, seems reasonable. Procedures guaranteeing this distribution of control, then, guarantee "optimum control relationships" since "the parties themselves are best qualified to describe their respective inputs or contributions to a transaction" (p. 549) – again, note the link with equity theory. The scholars conclude that "the just procedure for resolving the types of conflict that result in litigation is a procedure that entrusts much control over the process to the disputants themselves and relatively little control to the decision maker" (Thibaut and Walker, 1975: 2).

§2.1.6. The superiority of the adversarial system

On the whole, the founders of procedural justice theory assert that the distribution of control is the best predictor of fairness "and therefore of the preference for procedures" (Thibaut and Walker, 1975: 121). For this reason, the procedural system preferred by these founders resembles the Anglo-Saxon adversarial legal system more than the continental inquisitorial system. The first one according to them is best suited to attain justice. In an inquisitorial system, lawyers present their party's view; the parties themselves generally have but little opportunity to do so. In an adversarial system, the parties to the conflict do hold a good degree of process control while third-party control is limited. Hence Thibaut and Walker believe that adversarial procedures imply optimal distributions of control.

Mainly devoting their 1975 experiments to comparisons of the inquisitorial and the adversarial system of decision making, Thibaut and Walker and their associates have experimentally demonstrated people's preference for adversarial procedures. They studied the order of presentation of evidence in adversary proceedings and its effect on the determination of guilt or innocence (Walker *et al.*, 1972) and the effects of variations in treatment during adversary pre-trial conferences (Walker and Thibaut, 1970-1971). The adversarial and non-adversarial system were furthermore

contrasted and compared on aspects such as their capacity to reduce bias in legal decision making (Thibaut *et al.*, 1972; Lind *et al.*, 1976), the presentation of evidence (Lind *et al.*, 1973) and the level of participant and observer satisfaction with both types of proceedings (LaTour, 1978). Also, the level to which both types of proceedings influence reactions to the verdict (Walker *et al.*, 1979) and the level to which participants feel they were fairly treated by the systems (Thibaut *et al.*, 1974; Lind *et al.*, 1980) were examined. In all, subjects were more satisfied with the verdict received after the use of an adversary procedure and believed the adversary procedure to be more fair than its inquisitorial counterpart, *regardless of the verdict*, the reason for which according to the authors was that adversary procedures conform to the distribution of control that disputants prefer more than other procedures do (Lind and Tyler, 1988).

§2.2. Criticisms on the self-interest model of procedural justice

In a review of Thibaut and Walker's 1975 book, Caldeira (1976: 656) uttered that the book "should be a stimulus to further work in this field". As regards the book's impact, the least that can be said is that it has definitely provided for an incentive for numerous students in social psychology to further experiment with the procedural justice notion. But the pile of research following Thibaut and Walker's pilot work has also revealed a number of shortcomings of the Thibaut and Walker studies.

A first group of critical comments concerns Thibaut and Walker's methodology. First, the use of an experimental rather than a naturalistic methodology has been criticised (Caldeira, 1976) on the ground that experiments are an unsuitable method for the study of normative issues such as justice judgements (e.g. Hayden and Anderson, 1979). A thorough discussion on the suitability of laboratory experiments for investigating justice issues featured in procedural justice literature in the 1970s. Careful scrutiny of the main experiments reported in Thibaut and Walker's 1975 book led Hayden and Anderson (1979: 22) to state that the flaws in the experimental designs were "so serious that at least some of their findings must be viewed as, at best, highly speculative hypotheses in need of further testing". In a subsequent paper, Anderson and Hayden (1980-1981) denounced the overextension of results from experimental studies by procedural justice researchers and their lack of attention for external validity problems (see also Konecni and Ebbesen, 1979; Bray and Kerr, 1982). A second criticism relating to methodology is that Thibaut and Walker's experiments varied only formal, structural aspects of decision making, ignoring informal, relational aspects (Blader and Tyler, 2003b). A third methodological criticism is that all experiments were done with university students (Diamond and Zeisel, 1977; Tyler, 1989). In a review of Thibaut and Walker's 1975 book, Diamond and Zeisel (1977) called for replication of the Thibaut and Walker studies with real-life subjects. Research has indeed shown that people who have experience with the criminal justice system are

more sensitive to procedural fairness information presented to them than people who have not experienced the criminal justice system: the latter underestimate the effect of fair treatment and overestimate the effect of material interests on their justice judgements (e.g. Tyler, 2000b, 2001; Benesh and Howell, 2001; Wenzel *et al.*, 2003; Benesh, 2006; Buckler *et al.*, 2007). A final note on methodology concerns the manner in which the adversary and inquisitorial systems were simulated: the models as they were simulated were 'ideal' models that are never applied exactly like this in the real world (Diamond and Zeisel, 1977; Sheppard, 1985; Folger *et al.*, 1996).

The second main criticism on the theory is that it is not a theory about subjective justice but an attempt to identify the procedures that are best in any given circumstance from an objective point of view (e.g. adversary procedures counteract decision maker bias, Thibaut *et al.*, 1972). Yet those procedures that are best from an objective point of view may not be those that are most *preferred* by litigants and evaluated as the most fair (Lind and Tyler, 1988: 39, emphasis in original). People may for example have a greater need for a procedure that conveys respect for standing than for a procedure that counteracts decision maker bias.

A third insidious aspect of the Thibaut and Walker research according to their successors concerns the fact that perceptions of procedural justice according to these researchers are affected only by control. Other factors are not considered.

A final criticism on the self-interest model of procedural justice is that it defines procedural fairness in terms of outcome fairness: it is an instrumental and outcome-based model that assumes that people judge the value to participate in court proceedings only because and only to the extent that it allows them to achieve desired outcomes (Lind and Tyler, 1988; Tyler, 1990). Many studies however (e.g. Tyler, 1990) have found participants to care about participation beyond its relationship to outcome (Lind and Tyler, 1988). The self-interest model cannot explain this.

SECTION IV. PROCESS-BASED MODELS OF JUSTICE

Introduction

This section revolves around the process-based models of justice. Each of these provides a further elaboration on the initial theory of procedural justice by Thibaut and Walker. The angles from which the different authors look at procedural justice are different; they depart from different questions (see Table II-II on page 53). But the models are all normative models of procedural justice, as they were all conceived of by researchers convinced of the importance of non-instrumental determinants of justice. All validated this belief with empirical findings. The models that will be presented are the group-value model of procedural justice (§1), the relational model of justice (§2), the process-based model of regulation (§3) and the group engagement model of procedural justice (§4).

§1. The group-value model of procedural justice

§1.1. Introduction

The Social Psychology of Procedural Justice, a book by Allan Lind and Tom Tyler (1988), and Tyler's large-scale empirical study described in the book *Why People Obey the Law* (1990) jointly infused procedural justice research with an extended conception of the meaning of procedural justice. The authors presented a theory of procedure beyond the control theory put forward by Thibaut and Walker. Their model is known as the group-value model of procedural justice; it has provided for clarification of a number of observations that the self-interest model was unable to account for.

The architects of the instrumental model as said linked perceptions of procedural justice to perceptions of control; their thesis was that the degree to which one is awarded control serves as an indicator of the likelihood that a procedure will serve one's self-interest. The authors that developed the group-value model assert that procedural justice judgements are important because procedures communicate symbolic information not about profit or gain but about self-esteem, self-validation and identity. Furthermore, though the founders of the group-value model agree that control is an important determinant of procedural justice judgements, they accord control less weight. Whereas control according to Thibaut and Walker is the chief determinant of fairness judgements, Lind and Tyler assert that other factors influence fairness judgements too, and do so to a greater extent.

§1.2. The importance of group values to procedural justice judgements

Lind and Tyler's (1988) model of procedural justice is based on the values associated with group membership. The authors depart from the assumption that humans are, by nature, affiliative individuals. All individuals as a result connect with and belong to various social groups. All groups

hold a number of fundamental values that are shared by all group members (and that are learned by new group members through socialisation). These values permeate the procedures that are used by the group to resolve conflicts. Since these values and norms are conveyed through socialisation and thus internalised by the group members, individuals are unlikely to forego these ingrained group values and norms for their personal self-interest. Individuals acquire the group values and norms without rational evaluation of these norms; they attach to these values in childhood and thus have not had the opportunity to consider if they would have voluntarily opted for these values or whether these are in their own interest. This is why Lind and Tyler say that individuals develop an *affective* loyalty to the group: no rational evaluation of group membership comparable to the rational appraisal of group membership in Thibaut and Walker's control theory takes place.

Lind and Tyler suggest that group members will perceive the procedures used to resolve conflicts among group members to be just if these respect group values. Conversely, procedures are predicted to be perceived as unjust when they contradict deep-seated group values. This is because unfair procedures suggest that one is not a valued group member: one seems unworthy of being treated in accordance with group values. As Tyler and Lind (1992: 140) argue: "to the extent that a procedure is seen as indicating a positive, full-status relationship, it is judged to be fair, and to the extent that a procedure appears to imply that one's relationship with the authority or institution is negative or that one occupies a low-status position, the procedure is viewed as unfair".

§1.3. The value of participation

The question that arises is which values exactly should mark procedures. According to Lind and Tyler (1988: 236), a number of norms or values are "so basic to life in groups that they will occur in all group settings". One such value is the value of 'participation'. Lind and Tyler assert that procedures that offer parties to a conflict a possibility for representation will be regarded as more fair than procedures that do not, because the individual will feel validated in his/her group membership. Representation or 'voice' refers to the opportunity to express one's own opinion and arguments about the preferred allocation to the decision maker and to tell one's own side of the story (see Lind and Tyler, 1988; Folger, 1977; Folger *et al.*, 1979). Voice highly resembles Thibaut and Walkers' category 'process control'. People are also more likely to feel positive about the outcome of the procedure if they have been awarded voice. This is the so-called "fair process effect". People have been found on several occasions to react more positively to both desirable and undesirable outcomes after fair procedures as opposed to unfair procedures (e.g. Walker *et al.*, 1974, Folger, 1977).

§1.4. The importance of non-control values

Lind and Tyler consider participation a non-instrumental value: it is believed to have an effect on fairness judgements irrespective of whether through participation the conflicting parties have had an influence on the outcome. The authors identify a number of additional non-instrumental values determining fairness judgements. The reason they hypothesised non-control values to be important to fairness judgements was that they assumed that people are concerned about their long-term relationship with the third party/decision maker. As the third party is a group member too, the relationship with the third party is not limited to a one-time encounter. Therefore, relational concerns were thought to play a role in justice judgements. Tyler (1990) is the one who empirically identified a number of additional non-instrumental values. His large-scale 'Chicago study' inverted the age-old question 'why do people break the law' to inquire into the factors that encourage people to *abide* by the law. Tyler concluded that people use a variety of criteria when assessing procedural justice. The seven distinct aspects of procedures that Tyler found to *independently* influence procedural justice judgements were: (1) the authority's motivation, (2) honesty, (3) bias, (4) ethicality, (5) opportunities for representation, (6) quality of decisions, and (7) opportunities for correcting errors.

According to the study's results, the most important criteria were the neutrality of decision makers (absence of bias and dishonesty, efforts to be fair on the part of the decision maker) and ethicality (politeness of decision maker, respect for one's rights). The results backed up Thibaut and Walker's claim that people believe that procedures are more fair if they have been given a chance to present their arguments and learn that they have been listened to. Representation (which comprises process control and decision control) in fact ranked higher in the list of key attributes that led procedures to be perceived as fair than e.g. correctability and the quality of decisions. Outcome favourability on the contrary had only a minor influence on procedural fairness as compared to the other criteria.

Importantly, people were found to value all criteria, including the opportunity for representation in a procedure, irrespective of their effect on the outcome. Tyler *et al.* (1985) have called these effects 'value-expressive' as the enhancement of procedural fairness by these non-instrumental variables is unrelated to outcome favourability. From the Chicago study results Tyler (1990) furthermore infers that interpersonal (non-instrumental) elements explain more of the variance in procedural justice judgements than outcome-related (instrumental) criteria. These results square with the group-value model's assumption on the importance of proceedings to accord with group norms and values. Tyler's study thus provided the group-value model with empirical evidence for the first time.

§1.5. Standing, trust and neutrality

In 1989, Tyler refines the Chicago study findings to create three main categories of non-instrumental variables that are considered important to people who will be affected by the outcome of a decision making procedure because they are members of a group and care about group status. These three categories are neutrality, trust, and standing. In terms of operationalisation, *neutrality* was conceived of as proper behaviour, factual decision making, and a lack of bias in the authority's behaviour. Lack of bias included lack of discrimination by race, sex, age, nationality, or other personal characteristics; an enquiry on whether the legal authorities favoured one of the parties was added. Propriety or impropriety of behaviour was assessed by asking respondents whether the authorities did anything that was improper or dishonest, and whether they had lied. Factual decision making included questions on whether the authorities received the information necessary to make a good decision and whether the authorities tried to bring the problem into the open. *Trust* was assessed as the effort the authority had made to be fair. *Standing* was measured through questions on whether the authorities had behaved politely and whether they had shown respect for the respondents' rights.

Tyler (1989) finds that these three variables, which are all *group-related, non-instrumental* variables, explain more of the variance in dependent variables such as perceptions of the fairness of procedures and outcomes, affect towards the authorities and perceptions of the fairness of the authorities than control variables. Control variables prove important too, but never dominate fairness judgements. The study supports the group-value model's claim for extension of the control conception of procedural justice to include a more diverse range of potential determinants of procedural justice.

In 1996, Tyler and his co-authors (Tyler *et al.*, 1996) engage in reflection on the psychological processes underlying procedural justice's effect on group-oriented attitudes and self-esteem, because the literature on the psychology of procedural justice had empirically established the *determinants* of procedural justice (Tyler, 1989, 1990), confirming the group-value model's rationale, but had not yet ascertained the group-value model's assertion about the *consequences* of procedural justice, *i.e.* that procedural justice judgements positively influence group-oriented attitudes and behaviour. Tyler's team from the 1996 study concludes that the identity-relevant information that is provided to individuals through treatment by fair procedures indeed mediates between procedural justice judgements and group-oriented attitudes and behaviour, and does so to a greater degree than instrumental variables. Specifically, the information that fair procedures convey about the degree to which one is a *respected* group member and the degree to which the group member can take *pride* in its membership leads to group-oriented behaviour. The study furthermore shows that respect and pride mediate not only between procedural justice judgements and group-oriented behaviour, but also between procedural justice judgements and self-esteem.

§1.6. The cushion of support

Lind and Tyler with their group-value model in 1988 introduced the concept 'cushion of support'. This concept expresses the group-value model's assertion that the belief that a decision making procedure was fair attenuates dissatisfaction with an unfavourable outcome. When procedures are found to be consistent with group norms and values, the fairness of the procedure mitigates the dissatisfaction that follows from a negative outcome. Outcome evaluations are thus enhanced. Moreover, the disappointed individual is more likely to continue to support the authority responsible for the unfavourable decision as compared to comparable outcomes resulting from unfair procedures (Lind and Tyler, 1988; Tyler, 1990). Lind and Tyler document the cushion of support on the basis of data from Tyler (1987, cited in Lind and Tyler, 1988: 71), who found that attitudes towards authorities remained positive irrespective of the favourability of the outcome. LaTour (1978) found that procedural justice most strongly affects outcome evaluations when outcomes are undesirable: in those cases procedural fairness seems more important to litigants than in case outcomes are desirable, which is an important observation.

§1.7. The role of the outcome of a decision making procedure

The founders of procedural justice theory, Thibaut and Walker, clearly accorded the outcome of the decision making process an important place in considerations of procedural fairness. Lind and Tyler drew attention to non-control variables and therefore may leave one with the impression that the outcome of the decision making process according to them is of no importance at all to perceptions of fairness. Yet this is not the case: Lind and Tyler (1988) themselves reported that perceptions of procedural fairness are higher in case outcomes are favourable than when they are unfavourable. They have proposed that this may be due to litigants deriving from the outcome information about whether their input was taken into consideration. Think also of the result of the LaTour (1978) study just reported. In the end, as Tyler later wrote in a paper co-authored with Hollander-Blumoff, procedural justice research "do[es] not suggest that outcomes are unimportant but rather that procedural justice judgments make a distinct contribution to people's reactions to negotiations and negotiated outcomes" (Hollander-Blumoff and Tyler, 2008: 478).

§1.8. The difference between objective procedural justice and subjective procedural justice

Lind and Tyler (1988: 4) raised awareness for the distinction between objective procedural justice and subjective procedural justice, that is, between justice "as an objective state of affairs" and justice "as a subjective, psychological response". Evaluations of procedures can result from a comparison of the procedure with *objective* procedural standards, in which case the procedure will be considered fair

when it conforms to essential procedural safeguards. Possible safeguards are the ones laid down in national codes of penal procedure and the articles relating to penal procedure in the Universal Declaration of Human Rights. Evaluations of procedures however can also be based upon assessments of the degree to which the procedure meets *subjective* standards of fair procedure. In this case, evaluations do not concern the question whether procedures *are* fair but whether they *appear* fair to the disputants (Lind and Tyler, 1988: 63, original emphasis). Subjective standards, then, are the standards put forward by the group-value model. These are possibilities for participation, receiving respect from authorities, trust in the decision makers' intentions, and neutrality.

The distinction between objective procedural justice and subjective procedural justice has led the group-value theorists to identify cases of 'false consciousness of procedural justice'. The term points to situations in which a person believes a procedure was fair, while in fact on objective grounds it was not. Lind and Tyler (1988: 4) argue that "people's feelings that they were or were not fairly treated can sometimes be erroneous in terms of objective standards of justice". Both Lind and Tyler (1988) and Tyler (1990) caution for procedural manipulations by authorities by for example introducing possibilities for participation in order to make procedures *appear* fair and lead people to *believe* that they were fairly treated, when in fact they were not. These are cases of false consciousness of procedural justice. Procedural justice researchers have since the early days shown awareness for the possibility of abuse of their findings for governmental purposes.

§2. The relational model of procedural justice

Tyler and Lind in 1992 built on their 1980s research to create a comprehensive outline of a relational model of procedural justice. The relational model is not in the first place concerned with the antecedents of justice judgements but with the social psychology of authority. Tyler and Lind embark on the observation of social groups' propensity towards structure and authority. When groups face (imminent) conflict or crisis, Tyler and Lind assert, they show a tendency to create rules and empower authorities to apply these rules. The second aspect is scrutinised by the relational model of procedural justice. It applies the group-value model to group authority, extending that model's assertion that people care about their relationship with group authorities to offer an explanation for the *legitimacy* of group authority. According to the model, the legitimacy of authorities is based mainly on perceptions of authorities' respect for procedural justice. "Thus", Tyler and Lind (1992: 137) conclude, "to understand what drives legitimacy, we must understand what drives procedural justice judgments". The factors that drive procedural justice judgements are presented in a figure (see Figure II-II on the next page).

Tyler and Lind (1992) hold on to the three relational factors delineated above (standing, trust and neutrality); the main difference with the group-value model is that the relational model of authority does not include control variables. Tyler and Lind (1992: 159) explain that "measures of decision and process control do not appear to account for much variance in feelings of status beyond that explained by standing, trust and neutrality". Since control variables were present in their group-value model, this may astound. Tyler and Lind in 1992 (p. 159) however suggest, first, that if process control indeed affects procedural justice, as they proposed in 1988, it does so "by virtue of its effects on judgments on standing, trust, and neutrality". Second, they reason that people start assessing authorities' behaviour from the very initiation of contact: they possess sufficient factors on which to judge authorities (*i.e.* the relational factors) before information on the effect of instrumental factors (*i.e.* process control) becomes available.

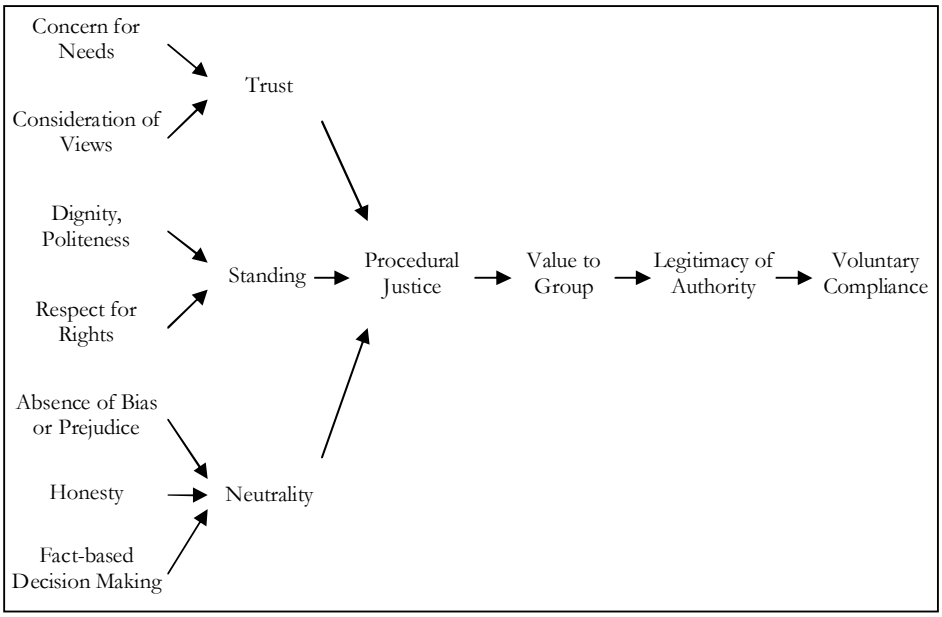

Figure II-II: The relational model of authority
(Source: Tyler and Lind, 1992: 159)

Tyler and Lind's 1992 paper is particularly interesting because it provides more information on the conceptualisation of standing, trust and neutrality. As can be seen in the above Figure II-II, trust points to concerns about authorities' intentions to consider parties' views and pay heed to their needs. Standing concerns authorities' respect for parties' rights and dignity. Neutrality refers to the absence of discrimination; it includes judgements about decision makers' honesty, the extent to which decisions are based on facts rather than prejudice, and the absence of bias.

§3. The process-based model of regulation

Tyler and Lind's work on the relationship between procedural justice concerns and judgements on the legitimacy of authorities was continued by Tyler and Huo (2002; see also Tyler, 2003). Tyler and Huo present a procedural justice model that evolves from both the relational model of authority just described and the group engagement model that will be discussed hereafter. The main question of the process-based model of regulation concerns the factors that lead people to accept the decisions made by legal authorities.

Unlike Tyler and Lind, who studied compliance with the law without further differentiating the concept, Tyler and Huo differentiate between decision acceptance and compliance with the law. Both are aspects of the public's law-related behaviour, but:

> Acceptance is distinct from compliance in that it involves voluntary or willing behavior. Compliance occurs when people follow rules or do as directed for whatever reason. (…) Compliance can be induced by the fear of force or punishment, while acceptance flows from consent and cooperation. (Tyler and Huo, 2002: 82)

Whereas the focal point of the relational model described above is on *compliance* with the law, Tyler and Huo are concerned with people's willingness to voluntarily *accept* legal authorities' decisions and directives. They argue that the "psychology of voluntary acceptance" should be distinguished from "the psychology of involuntary compliance" (p. 82). The keywords of the process-based model of regulation, then, are consent and cooperation instead of compliance. People need to "buy into" the decisions of legal authorities (Tyler, 2003: 286) for them to continue to follow decisions in the long run, that is, even when the authorities are no longer present (what Tyler calls "everyday compliance" (p. 290)). A self-regulating society would then substitute the deterrence-based society.

In order to generate this voluntary, cooperative attitude among citizens, what is required is "procedural justice in the actions of police officers and judges, and trust in the motives of legal authorities" (Tyler and Huo, 2002: 13). Tyler and Huo claim that citizens are more likely to accept authorities' decisions, whether favourable or unfavourable, if (1) these authorities act fairly in exercising their authority (procedural justice) and (2) people consider their motives trustworthy.

It seems that the two duo's – Tyler and Lind on the one hand, and Tyler and Huo on the other hand – paint a rather similar picture of the antecedents of legitimacy. Procedural justice is mentioned as a key factor by both. The second duo however perceives of "motive-based trust" (that is, "trust in the benevolence of the motives and intentions of the person with whom one is dealing", p. 15) as an *independent* element in generating willingness to accept decisions, next to procedural justice, whereas Lind and Tyler perceived trust to be one of three *determinants* of perceptions of procedural justice and legitimacy. This bemusing situation was touched upon by Tyler and Huo as follows (p. 15):

> Our results suggest that experiencing fair procedures and trusting the motives of authorities are connected inferences that people make about their personal experiences. The individual who experiences fair procedures is encouraged to trust the authorities. Conversely, when an individual trusts the authorities, he or she is more likely to see their actions as fair. (…) Our results suggest that each of these two judgements has a distinct, separate influence on the willingness to defer to authorities.

Tyler and Huo speak about trust not in an instrumental, rational sense: it does not refer to people evaluating whether authorities have kept the promise(s) they made. Instead, motive-based trust "involves inferences about the intentions behind actions, intentions that flow from a person's unobservable motivations and character" (Tyler and Huo, 2002: 61). In the context of criminal justice, questions people ask about authorities' speech and behaviour so as to infer conclusions about their intentions are, for example, (citing Tyler and Huo, 2002: 61-63) "Did they do everything they could to find my stolen property?", "Why was I stopped by the police?" or "Why did the judge pronounce this sentence?". These are questions about authorities' motivations for behaving in a particular way. Importantly, Tyler and Huo mention that an authority's failure to behave in expected ways is not detrimental to motive-based trust (that is, to the authority's perceived trustworthiness) if those considering the authority's behaviour deem that it acted out of good intentions and understand *why* the authority acted as it did. This is a major difference with traditional conceptions of trust. The empirical study reported on by Tyler and Huo (2002) shows that when people trust authorities' motives, they are more willing to accept their decisions, independent of whether these are favourable. Moreover, the importance of motive-based trust increases as outcomes become more negative.

Tyler and Huo's attention to trust and the way it is to be conceptualised in encounters with legal authorities was most welcome; of all the elements that had up till then been identified as determinants of procedural justice, trust was the most confounding one. Looking back to Lind and Tyler's 1988 and Tyler and Lind's 1992 conceptualisations of trust, one can observe that they too thought of trust as social, motive-based, non-instrumental trust. This provides some clarification on the utilisation and meaning of trust in the other models.

Trust in the motives of authorities is a first element fostering willingness to defer to authorities and their decisions. A second element according to Tyler and Huo is the experience that the authorities behave fair. Procedural justice, not outcome favourability or outcome fairness, was found to be the main determinant of decision acceptance and of reactions to authorities. A question then rises for the antecedents of procedural justice and motive-based trust. The authors discern two antecedents of procedural justice and trust: (1) the fairness of the decision making procedure and (2) the fairness of the treatment people receive.

Judgements on the *fairness of the decision making process* are determined by people's views on the neutrality of the decision maker. People expect decision makers to base their decisions on objective information, eliminating every possible ground of partiality or discrimination, and to consistently

apply rules across people and situations. Openness and adequate communication on behalf of the decision maker is a prerequisite for people to be able to judge the quality and fairness of the decision making process. Judgements on the *fairness of the treatment* depend on people's experience of whether they have been treated with dignity and respect, and whether their rights have been acknowledged.

A check for control (including participation) revealed that control judgements had no independent or direct influence on decision acceptance, however, control did have an effect on the perceived fairness of the decision making procedure and of the treatment people received, that is, on the two antecedents of procedural justice and trust. Still control variables were not included in Tyler and Huo's final conceptual model depicted in Figure II-III below.

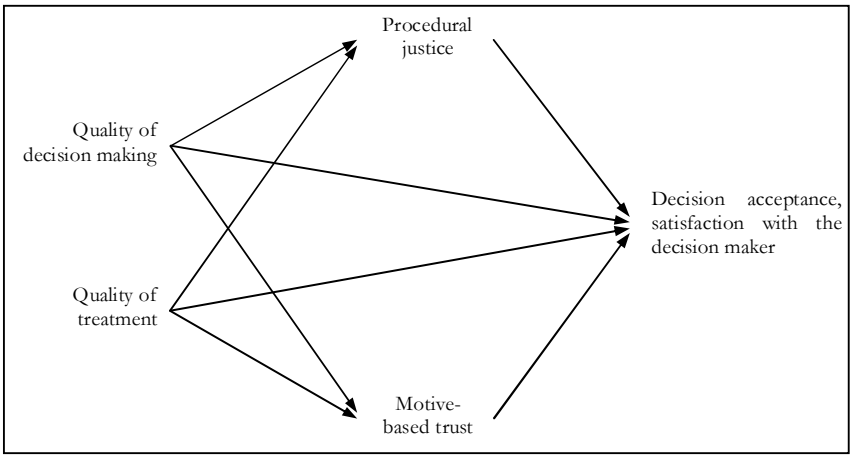

Figure II-III: The process-based model of regulation
(Source: Tyler and Huo, 2002: 17)

Tyler and Huo conclude that authorities can build legitimacy by exercising their authority in a way that meets procedural justice standards. In turn, legitimacy will lead to self-regulating behaviour, which will increase the legal authorities' effectiveness. To quote Tyler, "changing police 'style' may thus be as important as focusing police 'substance'" (Tyler, 2003: 298).

§4. The group engagement model of procedural justice

The group engagement model of procedural justice developed by Tyler and Blader (2000, 2001, 2003; Blader and Tyler, 2003a, 2003b) integrates and expands on the insights of the group-value model of procedural justice, the relational model of authority and the process-based model of regulation. Tyler and Blader endeavour to integrate the entirety of previous procedural justice research into one overall conceptual framework. They organise the antecedents of procedural justice previously discovered into a 'four-component model of procedural justice' and then consider the relationship

between these antecedents and people's willingness to engage in groups. The model's final goal is to provide insight into the antecedents of cooperation in groups, organisations and societies.

Tyler and Blader (2000: 4) differentiate between discretionary and mandatory cooperative behaviour. The distinction draws on the different sources of these kinds of behaviour: discretionary behaviour emanates from personal values (internal sources), while mandatory behaviour originates in group rules and prescriptions (external sources). Whereas Tyler and Blader deem instrumental factors (rewards and punishments) plausible motivational factors for mandatory cooperative behaviour, they assert that these cannot account for people's voluntary cooperative behaviour. They believe that the roots of voluntary cooperation lie in perceptions of procedural justice.

The four-component model provides a taxonomy for the types of criteria that people use to assess the fairness of experiences. It is not in the first place concerned with *why* people care about justice; it aims to organise the *antecedents* of procedural justice, "what the domains of procedural justice concerns will be *in most contexts*" (Blader and Tyler, 2003b: 113). The question of why people care about justice is handled by the broader group engagement model of which the four-component model is only the first step. The four-component model generates from a differentiation between different types of justice (the quality of decision making or the quality of treatment) and different sources of justice (formal or informal) (Blader and Tyler, 2003b).

The first distinction is between types of justice concerns. This distinction was also made by Tyler and Huo (2002) and is based on the *content* of the evaluation. A first type is the quality of decision making. This aspect resembles the factor neutrality. Authorities are expected to act in independent, consistent and unbiased ways and to make decisions on the basis of factual information, not emotions or favouritism. The second type is the quality of treatment, which resembles the factor standing. People wish to be respected as a person and to have their rights respected, as a sign of inclusion in their particular group. The second distinction is between justice sources or different origins of the experience. Formal, official rules and procedures are a first source. These are structural in nature, codified, and fairly constant across time, situations, and people. The informal sources of procedural justice are the specific group authorities with whom one is dealing and therefore are dynamic (Tyler and Blader, 2000; Blader and Tyler, 2003a, 2003b).

The orthogonal crossing of the two dimensions results in four components that, according to the authors (2000, 2003b), underlie all procedural justice judgements. Together they compose the four-component model of procedural justice (see Figure II-IV on the next page).

.

The four-component model of procedural justice			
	Justice source		
Content of evaluation		*Rules of the group (formal)*	*Actions of supervisor (informal)*
	Quality of decision making processes	Formal quality of decision making	Informal quality of decision making
	Quality of treatment	Formal quality of treatment	Informal quality of treatment

Figure II-IV: The four component model of procedural justice
(Source: Blader and Tyler, 2003b: 117)

The first component of procedural justice according to Tyler and Blader is the *formal quality of decision making*. It refers to the perceived fairness of the official rules prescribed and applied by the group for making decisions and resolving conflicts. The second component of procedural justice is the *informal quality of decision making*. Judgements on this component are determined by the individual's perception of the fairness of the application of the rules and procedures by an individual group authority. Formal rules cannot anticipate every possible situation or conflict of interest and will thus have to be interpreted by the authority applying them to a particular situation. One aspect that determines fairness, then, is the way the authority uses this discretionary power. The actual application of a formal rule may change its original level of fairness. The third component of procedural justice is the *formal quality of treatment*, which relates to the perceived fairness of group rules on the treatment of the group members. Tyler and Blader give the example of the U.S. Bill of Rights, which defines that people should be treated with dignity and respect, and group rules on how e.g. group authority decisions should be conveyed to group members. The fourth component of procedural justice is the *informal quality of treatment*. This component refers to the perceived fairness of experiences with specific authorities (Tyler and Blader, 2000; Blader and Tyler, 2003a, 2003b).

The first and the last of these four elements (*i.e.* the formal quality of decision making and the informal quality of treatment) sound most familiar. These are the aspects that had up till then been examined by procedural justice research. Blader and Tyler (2003a, 2003b) assert that procedural justice research had neglected the other two elements, *i.e.* the role of individual group authorities and agents (the informal quality of decision making[13]) and the influence of formal factors on the quality of treatment (the formal quality of treatment). The authors have empirically found all these elements

[13] Later on, some research on the implementation and interpretation of formal rules and guidelines by individual court actors did become available. See e.g. Johnson (2006), who found that sentencing guidelines are filtered through individual courtroom actors and coloured by informal and locally varying courtroom norms.

to have a unique influence on people's procedural justice judgements, but the *informal* sources of information were found to account for a greater amount of variance in procedural justice than the formal sources (Tyler and Blader, 2000; Blader and Tyler, 2003a).

As said, the study of the antecedents of procedural justice to Tyler and Blader was the first step in creating the group engagement model. The next step was to study the relationship between the antecedents of procedural justice and people's willingness to engage in groups. It is a pervasive intuitive notion that people are unwilling to engage in groups since this means that at times they have to forfeit their personal profit for the well-being of the group. Tyler and Blader in contrast to this instrumental approach argue that procedural justice evaluations are cues for people to evaluate their identity and status. This identity and status information in turn determines people's willingness to engage in cooperative behaviour. Social identity information mediates the relationship between procedural justice judgements and cooperative behaviour. The authors refer to this as the social identity mediation hypothesis (Tyler and Blader, 2003).

This hypothesis is not new; Tyler and Blader return to the study by Tyler *et al.* (1996) described on page 67. Tyler's team in 1996 already concluded that the identity-relevant information that is provided to individuals through treatment by fair procedures mediates between procedural justice judgements and group-oriented attitudes and behaviour. Specifically, the information that fair procedures convey about the degree to which an individual is a *respected* group member and can take *pride* in its membership, were identified as measures of identity. Tyler and Blader initially (2000) hold on to these two aspects of social identity. Later on, the authors add identification with the group as an intermediate step between perceptions of respect and fairness on the one hand and behavioural engagement with the group on the other hand. Identification is described by Tyler and Blader (2001: 210, 2003: 354) as the degree to which people cognitively merge their sense of self with their judgements on the status of their group. Figure II-V on the next page depicts the complete model.

According to the group engagement model, people cooperate in groups independent of whether their contribution will be rewarded. They do so because their cooperative behaviour contributes to the success of the group. Being part of a successful group in turn positively affects sense of self and social identity. This implies that people avoid joining low status groups and that they "cooperate in groups *to the extent that* those groups are important in their efforts to create and maintain a favorable sense of self- and social identity" (Tyler and Blader, 2001: 209, my emphasis). As such, the model also explains *reluctance* to engage in groups.

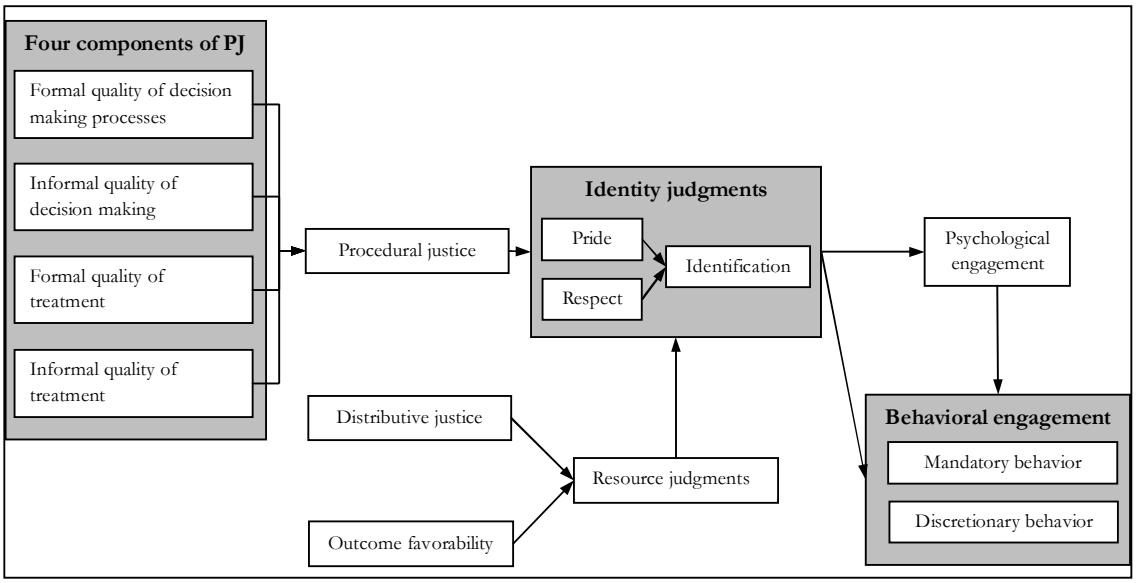

Figure II-V: The group engagement model of procedural justice
(Source: Tyler and Blader, 2003: 354)

To end, it should be mentioned that Tyler and Blader (2000) did not find a direct positive relationship between control issues and procedural justice. Procedural justice is determined by "public assessments of the fairness of the manner in which authorities exercise their discretionary authority when implementing the law and/or making decisions about whether and how to provide assistance to those in need" (Sunshine and Tyler, 2003: 515). Mark the salience in this quote of the two 'forgotten' elements of procedural justice research, namely the informal quality of decision making and the formal quality of treatment.

SECTION V. CONCLUDING OBSERVATIONS

Introduction

At the end of this chapter, I will provide the reader with a number of observations that arise from comparing the models presented above. First, I will reflect on the self-interest model of procedural justice again, knowing the point of view of those who presented process-based models of procedural justice (§1). Second, I will consider the relationship between procedural justice and distributive justice (§2). Third, I will address the debate about whether procedural justice should be distinguished from interactional justice (§3). Near the end of the section, I will supply the reader with a summary of the models presented above and a figure depicting them on a continuum (§4).

§1. A look back at the self-interest model of procedural justice

An interesting question at this point is how the fact that Thibaut and Walker (1975, 1978) found material interests to be the main determinant of perceptions of procedural justice can be explained, when so much evidence contradicts this stance. Lerner's (2003) paper provides useful starting points.

A first explanation for Thibaut and Walker's findings may be the use of experimental designs (Lerner, 2003). Tyler and Caine's (1981) study into the difference between the salience of fairness considerations in experimental settings as opposed to natural settings showed indeed that individuals focus much more on procedure in natural settings than in experimental settings.

Second, Lerner (2003) argues that studies that find self-interest motivations to be of major importance to fairness judgements typically confront participants with low-impact situations, that is, situations that are not likely to elicit strong emotions in the participants because the threat of actual or possible suffering and deprivation is low. In the absence of such threat and emotions, Lerner argues, participants are concerned mainly with 'impression management', that is, they will behave such that they do nothing to embarrass themselves. This they do by putting self-interest and the maximisation of profit before fairness. The Thibaut and Walker experiments fit Lerner's idea of low impact situations well. It is unlikely that their simulations aroused high emotions since the participants knew very well that they were participating in the experiments for additional credits or for limited amounts of money. The subsequent research demonstrating the importance of procedural fairness did take place in naturalistic settings. For example, the Tyler (1990) and Tyler and Huo (2002) studies were conducted on citizens, Tyler and Blader (e.g. 2001) studied employees, and many of the studies on which Lind and Tyler based the group-value model involved disputants, defendants or citizens. Therefore, this explanation for Thibaut and Walker's results seems plausible.

A third explanation offered by Lerner is that experimental studies allow participants sufficient time to carefully consider their circumstances: in these cases too, he argues, people are highly likely to substitute concerns for fairness with adherence to conventional norms of self-interest – not because self-interest is more important than fairness, but as a way of impression management. In order not to look foolish, people turn to conventional norms of self-interest. This stands in sharp contrast, citing Lerner, to those situations in which people react automatically and intuitively to injustice. In such cases, they do direct their behaviour to re-establishing justice and give up economic interests. As for Thibaut and Walker, they created experiments that simulated business espionage cases or decision making in the advertising business through laboratory experiments, usually involving groups of students who 'competed' with other groups of students. The participants had sufficient time to think about their response to injustice, because they were instructed to hold a group discussion before deciding on how to respond to the injustice as a group. Lerner's argument therefore again may apply.

§2. The relation between procedural justice and distributive justice

Justice research up to the late 1960s had virtually only considered and explored issues of distributive justice and was then faced with evidence indicating that not only outcomes but procedures too influence people's fairness judgements. Unsurprisingly, then, the relation between procedural justice and distributive justice received considerable scholarly attention. Justice theorists studied two aspects of the relation between these two models. First, they investigated whether distributive justice and procedural justice constitute two alternate foci of attention or whether people pay attention to both to combine their judgements on both aspects when subject to an allocation decision. Second, questions arose as to the absence or presence of causal mechanisms between the two models of justice. In summary, what was investigated was whether distributive justice and procedural justice are taken into account by individuals simultaneously and whether they influence each other.

As to the first question, Thibaut and Walker were convinced that procedural justice and distributive justice constitute two alternate foci of attention. In the experiments presented in their 1975 book, procedure and trial verdict were manipulated independently from each other in order to assess their *separate* impact on satisfaction and fairness ratings (Tyler and Folger, 1980). Thibaut and Walker (1975: 3) assumed the following:

> The differences between the two forms of justice are clear:
>
> Although procedural justice may often lead to and produce distributive justice, it is possible for distributive justice to be achieved without the application of any special procedure, as when all parties spontaneously agree about a fair allocation.
>
> It is only when allocation is in dispute that procedures are necessary and only then, therefore, does the question of procedural justice arise.

> Procedures – whether just or not – may be applied to disputes having nothing to do with problems of allocation, as in criminal suits in which the decision entails no allocations (…).

Barrett-Howard and Tyler's (1986) and Tyler and Folger's (1980) studies however showed that respondents focus on *both* types of fairness when considering a decision making process. A caveat with respect to the first study is in order though. As the authors indicate themselves, the experimental condition in this study forced respondents to rate the importance of both types of fairness. Subjects were not given the opportunity of considering only one. The authors, then, recommended for future research to make use of open-ended questions not forcing respondents to consider both process and outcome. Though not using an open-ended format, Tyler and Caine (1981) did study procedural justice in a natural setting, and compared it to studies on the same subject in experimental settings. They found the following:

> In the experiments subjects were presented with a situation within which cues concerning outcomes and procedures were explicitly called to their attention and other clues were not present. The results in this case indicate that subjects can take both factors into account. The survey results suggest that although subjects *can* take both factors into account, in natural settings subjects *do not* take both into account. In natural settings subjects focus on issues of procedure, not on outcome levels (Tyler and Caine, 1981: 653, original emphasis).

One study that did use open-ended questions to examine procedural and distributive justice was a German study by Barrett and Lamm (1989). Respondents were at the end of a questionnaire asked to discuss their concerns in making allocation decisions, in order to discover whether they would consider justice issues when not explicitly asked to do so. Results showed that they did (nearly half of the respondents mentioned justice-related issues); however, subjects were more concerned with distributive justice than with procedural justice. In conclusion, beyond proving the importance of fairness issues to people, even when unprompted, these studies indicated that people can indeed consider both types of fairness at the same time, which however does not imply that they always do.

As to the second question, the question of interrelatedness between distributive justice and procedural justice, Thibaut and Walker as the quote above shows indeed believed that perceptions of procedural justice influence perceptions of distributive justice. Walker *et al.* (1979) too found that perceptions of procedural justice enhanced perceptions of distributive justice, but only for people who personally participated in the decision making process. The experiment showed no relation between procedural justice and distributive justice with subjects who did not participate in the decision making process. This led the authors to conclude that procedural justice and distributive justice are related, albeit "only by the element of actual participation in the decisionmaking experience" (Walker *et al.*, 1979: 1416).

Gradually, further evidence of mutual influences between procedural justice and distributive justice was delivered by new studies, such as the LaTour (1978) and Lind *et al.* (1980) studies on adversary and non-adversary proceedings. LaTour's subjects were tried under one of four procedures

that incorporated three essential differences between the adversary and the non-adversary model (two attorneys instead of one, attorney alignment with defendant, and choice of attorney). All three procedural variations were found to cause variations in outcome evaluation. However, the effect occurred only with unfair decisions. In case of fair decisions, procedure did not affect outcome evaluation. Lind *et al.* (1980) confirmed the effect of procedure on perceived outcome fairness. In this study too, verdicts were perceived more fair following an adversary rather than a non-adversary procedure.

LaTour's (1978) study also lent credence to the assumption that perceptions of procedural justice are influenced by perceptions of distributive justice. Innocent verdicts (outcome fairness) in the experimental setting produced more favourable procedural evaluations than did guilty verdicts (outcome unfairness). Contrary to this study, Lind *et al.*'s study (1980) found no outcome effects on perceptions of procedural justice. Favourable verdicts did not lead to higher perceptions of procedural justice, nor did unfavourable verdicts lead to lower levels of procedural justice.

With respect to causality between distributive justice and procedural justice, a Tyler and Folger study (1980) furthermore found that citizens who had been stopped by the police and cited for a violation were less likely to indicate that the police treated them fairly than citizens who had called the police themselves for an intervention. From a study on inmates' perceptions of their experience with criminal justice, Landis and Goodstein (1987) concluded that the strongest predictors of perceived outcome fairness were fair treatment by the actors in the criminal justice system and the mode of disposition of the case (plea bargain or trial). In other words, two procedural variations had an impact on perceived outcome fairness. Defendants participating in a Casper *et al.* (1988) study perceived the procedure to be less fair as they received increasingly harsher outcomes. Finally, the major predictor of procedural preferences among the inmates surveyed by Kurtz and Houlden (1981) was the extent to which the procedure favoured the defendant.

Jointly, these studies provide evidence for the existence of a relation between outcome and procedural fairness in both causal directions. Also, researchers have acknowledged that people combine both outcome and procedural concerns to form an overall justice evaluation: these two concerns are inextricably connected (Brockner and Wiesenfeld, 1996; Vermunt and Törnblom, 2007) and according to some even highly similar (see Cropanzano and Ambrose, 2001).

§3. Procedural justice, interactional justice, interpersonal justice and informational justice

As from the mid-1980s, researchers introduced a third model of justice, *i.e.* interactional justice. The concept interactional justice was advanced by Bies and Moag (1986) and Bies (1987) in the context of research on justice in organisations and workplaces. Bies and Moag (1986) defined interactional

justice as the quality of the interpersonal treatment that people receive as procedures are enacted. Subsequent work on the topic (e.g. Greenberg, 1993; Colquitt, 2001) suggested that interactional justice consists of two components. The first one is interpersonal justice; the second one is informational justice. Interpersonal justice relates to the degree to which people are treated with respect and politely by the authority implementing a procedure; informational justice relates to the degree to which people are provided with information about why procedures are enacted in the way they are and on the reasons for arriving at a certain outcome (Colquitt *et al.*, 2001). Interactional justice, then, is concerned with treating subordinates with respect and providing them with explanations for decisions taken (Bies and Moag, 1986; Tyler and Bies, 1990). Interactional justice is distinguished from procedural justice. It is argued that whereas procedural justice relates to the application of rules and procedures, interactional justice concerns the manner in which those affected by decisions are treated by decision makers (Vermunt *et al.*, 1993).

More information on the exact conceptualisation of the concepts can be found in Colquitt (2001), who was praised by Bies (2005) for the way he measured the concepts interpersonal justice, informational justice and procedural justice. *Interpersonal justice* was measured by asking subjects to which degree the authority figure enacting the procedure had treated them in a polite manner, with dignity and respect, and had refrained from making improper remarks. *Informational justice* was assessed by asking subjects to which degree the authority figure enacting the procedure had been candid in his/her communication with them, had thoroughly explained the procedures, had provided for reasonable explanations for the procedures, had communicated information in a timely manner and had tailored his/her communications to their needs. *Procedural justice* was measured through questions asking respondents if they had been able to express their own views and feelings during the procedure, whether they had had an influence over the outcome, whether procedures had been applied consistently, had been free of bias and had been based on accurate information, whether they had been able to appeal the outcome and whether the outcome upheld ethical and moral standards.

In terms of the group-value model of procedural justice, then, roughly speaking, interactional justice bundles elements that the group-value model of procedural justice includes under the banner 'standing' (Bies, 2001, 2005), whereas the concepts 'trust', 'neutrality' and 'voice/participation' are perceived as determinants of procedural justice (Bies, 2005). Procedural justice is believed to result from an appraisal of the formal aspects of a decision making process, whereas perceptions of interactional justice are believed to result from an appraisal of the interpersonal treatment received during the decision making process (Cropanzano *et al.*, 2002), including the degree to which one has received a justification for authorities' actions and decisions (Bies and Shapiro, 1987).

There has been considerable debate about the status of interactional justice vis-à-vis procedural justice. Some argue that it is a component of procedural justice (e.g. the group-value model of procedural justice includes standing as an element of procedural justice; see also Tyler and Bies, 1990), this means, that procedural justice can be broken down into structural elements and interactional elements (Collie *et al.*, 2002). Others state that procedural justice and interactional justice are clearly distinct concepts (e.g. Bies and Moag, 1986; Colquitt, 2001; Cropanzano *et al.*, 2002; Bies, 2001, 2005). Some empirical evidence for the conceptual difference between procedural justice and interactional justice was found by Cropanzano *et al.* (2002). They found that procedural justice is important when people evaluate an exchange between themselves and their organisation, but that interactional justice is more important than procedural justice when they evaluate exchanges with their direct supervisor. Procedural justice, the authors argue, is important especially when people react to upper management and to organisational policies, but interactional justice is what is taken into account when determining how to react to one's supervisor. Bies and Moag (1986) explain that procedural justice determines reactions to decision making *systems* (e.g. the organisation), whereas interactional justice determines reactions to decision making *agents* (e.g. one's supervisor).

Bies (2005: 94) from a review of literature on procedural justice and interactional justice (consisting of interpersonal justice and informational justice) concludes that "there is some evidence that procedural, informational and interpersonal justice have different antecedents", and Colquitt *et al.* (2001: 437-438) conclude their metastudy on the subject with the statement that the three forms of justice "can be empirically distinguished from each other", though all are strongly correlated. This means that the concept 'justice' would consist of four dimensions: procedural justice, distributive justice, informational justice and interpersonal justice (Colquitt, 2001; Colquitt *et al.*, 2001).

I have only scratched the surface of the literature on interactional justice here. In my point of view, it is not necessary to the end of this dissertation to go further into the topic, because the concept of interactional justice does not bring new determinants of justice into the discussion: all elements that have been included under the banner 'interactional justice' have been identified by previous researchers who grouped these elements under the concept 'standing'. The discussion therefore should be kept in mind but is not a focal point of this dissertation.

§4. Summary

At the end of this chapter, a summary of the models of justice described above is in place. Below, I will summarise the main evolutions in procedural justice research and visualise the different models on a continuum.

As for the *evolutions in procedural justice research*, from the Thibaut and Walker experiments to the group engagement model, one can observe a broadening both in the scope and in the sources of justice-related information, as Tyler and Blader (2000) argue. The scope has broadened in that the first studies on procedural justice only investigated simulated conflicts in a business context, whereas subsequent research investigated people in diverse natural settings, including the context of criminal justice. The sources of justice-related information have broadened because whereas Thibaut and Walker looked specifically into the formal sources of procedural justice, subsequent research looked into the influence on perceptions of procedural justice of relational aspects of decision making. Table II-III below provides an overview of the contributions to the field of procedural justice of each of the models. It is an adapted version of an overview offered by Tyler and Blader (2003: 352).

Table II-III: Added value of each of the main justice models

Model	Focus of concern	Value added by model	Antecedents of procedural justice (2)
Self-interest model	Allocation of resources (2)	Fair decision making procedures contribute to outcome fairness judgements (2)	Process control (voice) Decision control
Group-value model	Procedural justice judgements (1)	Noninstrumental factors influence judgements about procedural justice (1)	Standing, trust, neutrality Process control (voice)
Relational model	Authority relations, leadership (1)	Procedural justice shapes reactions to authorities (1) Relational concerns (neutrality, standing, trustworthiness and status recognition) shape judgements about procedural justice (1)	Standing Trust Neutrality
Process-based model	Authority relations, leadership (2)	Procedural justice influences not only compliance with the law but also the acceptance of authority decisions Clarification of concept 'trust' (2)	Quality of decision making Quality of treatment
Group engagement model	Attitudes, values, and cooperative behaviour in groups (1)	Procedural justice shapes identity judgements Identity judgements directly shape attitudes, values, and cooperative behaviour (…) (1) Pride and respect influence identification with the group (1)	Formal and informal quality of decision making Formal and informal quality of treatment

(1) From Tyler and Blader (2003: 352)

(2) Added by the current author

Next, I would like to *visualise the different justice models on a continuum*, following the example of Machura (1998). Machura put four models (equity theory, Thibaut and Walker's model, the group-value model and Rawls' concept of pure procedural justice) on a continuum of increasing importance of procedural elements. I added to Machura's model the other models of justice discussed above. The adapted continuum shows in Figure II-VI on page 86.

The models on the left side of the continuum are outcome-based models of justice, moving to the right side of the continuum one finds models of justice that are increasingly process-based. First on the left is equity theory by Adams, who defines fairness exclusively in terms of the distribution of outcomes. Equity theory considers only the final distribution of rewards and punishments, neglecting the procedures that generate the distribution. Second on the continuum is the self-interest model of procedural justice by Thibaut and Walker, which did draw attention to the role of procedural elements in fairness judgements, but perceived the importance of these procedural elements in terms related to outcome. The justice judgment model of Leventhal in my opinion should find a place on the continuum between Thibaut and Walker's theory and the group-value model of procedural justice, as it attributes a more important role to procedural elements than Thibaut and Walker do, but still heavily focuses on the distribution of tangible goods. Moving on to the theories which attach most importance to procedural elements as determinants of fairness, one finds the relational models of procedural justice and Rawls' model of pure procedural justice.

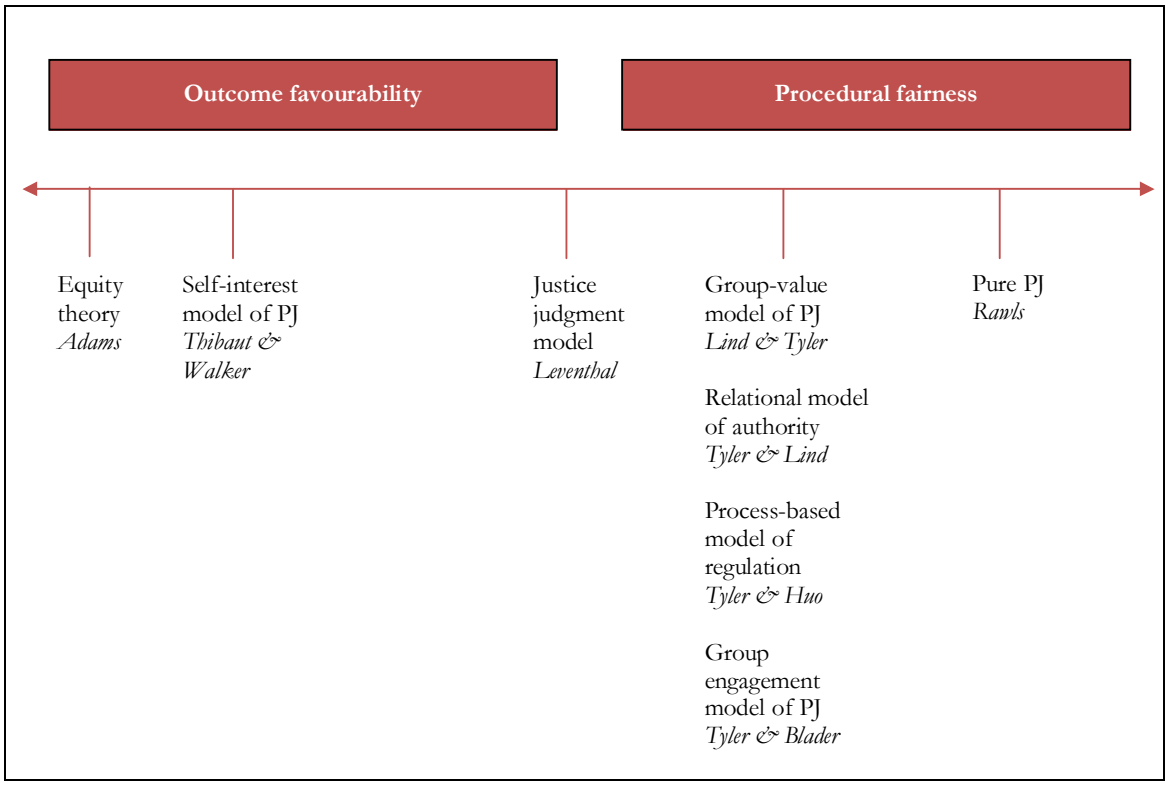

Figure II-VI: Adapted diagram of the justice models

Note that distributive justice as a model of justice cannot be placed on the continuum. Distributive justice focuses on fairness, just as the other normative theories; however, it assigns no role at all to procedural elements of fairness. Since the model does not assign credit to outcome favourability either, I do not find it appropriate to assign it a place on the continuum.

Chapter III. FOUR DECADES OF PROCEDURAL JUSTICE RESEARCH

This third chapter provides the reader with an understanding of the evolution in procedural justice research throughout the years. The specific evolution this chapter focuses on relates to how early procedural justice researchers were confident that it was possible to construct one procedure that would universally be perceived as the single most fair procedure to deal with conflict – "abstract, depersonalized models that could apply to anyone" (Clayton and Opotow, 2003: 298) – and how this position has changed to an understanding of the impossibility of designing one such procedure. This chapter aims to provide insight into this evolution. The reason why an insight into this evolution is important is that the current study aims to contribute to answering the question of *when* the different determinants of justice are most important to people. It is therefore essential to be aware of findings of previous research on this matter. I chose to start the analysis in the late 1960s – early 1970s for scientific research on the social psychology of justice properly set off in this period (Folger, 1984; Skitka and Crosby, 2003).

In the first section of this chapter, I will examine forty years of procedural justice research in order to demonstrate how procedural justice researchers have come to realise that depending on circumstances or individual qualities, different elements may influence procedural justice judgements, or, at least, that the relative importance of the different determinants of procedural justice may vary. It is the purpose of this first section to furnish results of procedural justice studies that attest to this evolution. The second section of the chapter further elaborates on the above assertion that people apply different models of fairness to different situations. This section deals with two recently developed hypotheses which state that in some circumstances fairness concerns are overridden by outcome concerns. These are the value protection model and fairness heuristic theory. These hypotheses are not a return to the first, outcome-based models of fairness, in the sense that they do acknowledge the importance of procedural fairness. However, they demonstrate that there are limits to the allegations of procedural justice scholars, asserting that in some circumstances, the fair process effect does not hold.

SECTION I. UNDERSTANDING THE CONTINGENCY OF JUSTICE JUDGEMENTS

Introduction

Procedural justice researchers have come to realise that (the relative importance of) the antecedents of procedural justice judgements differ depending on circumstances or individual characteristics; they have become aware of the "contingent nature" of procedural justice and the impossibility of designing one procedure that is universally perceived as just (Skitka and Crosby, 2003: 282; see also Lind and Tyler, 1988; Tyler and Lind, 2001; Clayton and Opotow, 2003; Skitka, 2009). They have explored variations in preferences for procedural models as a function of *individual*, *contextual* and *relational* variety and have found that the relative importance of justice norms indeed varies according to individual, contextual and relational factors. These findings are of importance to the current study, because they are all key in view of the question of *when* certain determinants of perceptions of justice are more likely to play a role than others. They are therefore reported below, starting with identity factors (§1), then moving on to relational factors (§2) and contextual factors (§3) and ending with a conclusion (§4).

§1. The impact of identity factors on justice judgements

Tyler and Lind in 2001 (p. 81) wrote that there is a possibility "that people will arrive at different conclusions about the fairness of a given procedure." Therefore "the problem of how to specify which procedure is "best" in procedural justice terms becomes especially problematic" (p. 82). It is possible that parties in a procedure define procedural fairness differently. This leads to the study of the influence of individual characteristics on the determinants of procedural fairness.

A first crucial theme to consider is the *ethnicity* theme (Leung and Morris, 2001). Throughout the 1970s and 1980s, the cross-cultural generality of procedural preferences and the cross-cultural importance of procedural justice among western (Northern American and European) research subjects were affirmed by LaTour *et al.* (1976) and Lind *et al.* (1976, 1978). Critics (e.g. Hayden and Anderson, 1979) however warned that the preferences for procedures as found among Europeans and Northern Americans might not apply to non-western subjects.

A substantial number of studies therefore attended to the issue again, this time broadening the scope to subjects of non-western descent. Ohbuchi *et al.* (2005) confirmed the validity of the group-value model of procedural justice in Japan. Lind *et al.* (1994) set up an experiment among four ethnic groups (African Americans, Hispanic Americans, Asian Americans, and European Americans) to test the cross-cultural validity of procedural preferences. Lind *et al.* (1997) set up a similar study involving American, German and Chinese students. Both studies showed minor differences in procedural

preferences across ethnic groups. All groups accorded the same relative weight to fairness in comparison to outcome favourability (fairness was the strongest predictor of procedural preferences in all ethnic groups), and all groups defined procedural justice in terms of the relational variables status recognition, trust and neutrality. That said, the authors did warn explicitly that the differences that *were* found, however small, did prevent from stating that ethnicity does not matter at all in the choice of procedures. Leung and Lind (1986) and Leung (1987) for example found that while American subjects expressed a strong preference for the adversary procedure, Chinese subjects were indifferent on this matter.

Leventhal and Anderson (1970), Leventhal and Lane (1970), Benton (1971), Mikula (1974) and Austin and McGinn (1977) discovered *sex differences* in preferences for distribution rules. Generally, males appeared to strongly adhere to an equity rule; females were more compromising and sometimes even strongly focused on equality. One's *professional status* may also have an influence. Lissak and Sheppard (1983) conducted a study on employees and managers in the United States; they found that fairness was a less important factor to managers than it was to non-managers.

Moving on to other personal characteristics, Sweeney *et al.* (1991) investigated the role of people's *locus of control orientation*[14] in procedural justice judgements. Their study demonstrated that people with an internal locus of control are more sensitive to (not) having an opportunity to have a say in decisions than people with an external locus of control. Locus of control moderated the relationship between perceived voice and perceptions of procedural justice.

In a similar vein, Holmvall and Bobocel (2008) investigated the connection between procedural justice judgements and the *source of individuals' self-identity*. The authors discerned between individuals who base their self-identity on their relationships with others and individuals who base their self-identity on their own achievements. Results showed that the first group of individuals reacted positively to an unfavourable outcome following from fair procedures, as was to be expected on the basis of procedural justice theory. However, the second group of individuals tended to react rather *negatively* to an unfavourable outcome following from fair procedures. Whereas procedural justice theory argues that fair procedures enhance people's self-esteem, the Holmvall and Bobocel study indicated an opposite relationship for individuals with strong independent self-construal. The authors suggested that the fact that these individuals reacted negatively to fair procedures could be due to fair procedures indicating personal responsibility for negative outcomes (see also van den Bos *et*

[14] The term locus of control was introduced by Rotter (1954, 1966) and refers to the degree to which people perceive they have control over situations and things that happen to them. People with an internal locus of control tend to attribute outcomes to their own behaviour or characteristics, whereas people with an external locus of control generally attribute outcomes to external circumstances.

al., 1999). The authors concluded that "people interpret procedural fairness information in a manner that is consistent with defining aspects of the self" (Holmvall and Bobocel, 2008: 147).

Olson and Huth (1998) discovered that procedural fairness is a more important determinant of public support for courts to people with *prior experience with the court* than to people lacking this experience. People with experience with the court appear to evaluate these courts differently than others (see also Parmentier and Vervaeke, 2011). The conclusion that procedural justice concerns are particularly important to people who have experienced the criminal justice system is supported by Benesh and Howell (2001: 209), who however add that "it is not as simple as experienced versus inexperienced": type of experience matters too, in the sense that some types of experience are more likely to promote confidence in the courts (e.g. having served on a jury) while other types of experience are expected to diminish confidence in the courts (e.g. defendants). As for contacts with the police, the Belgian Safety Monitor of 2008 (the most recent one at the time of writing) confirms that type of contact is important: citizens who had encountered the police because of victimisation were less satisfied about the police than those who had had contact with the police for other matters, such as an administrative matter or being fined (Van den Bogaerde *et al.*, 2008-2009).

Another notion that marks the study of individual differences in reactions to injustice is the concept of *justice sensitivity*. It was introduced by Schmitt *et al.* (1995) after they had observed that victims of injustice differ in their sensitivity to an experience of injustice. The authors suggested that individuals' levels of justice sensitivity could account for this, observing that people high in justice sensitivity reacted more heavily to unfair situations than persons low in justice sensitivity. Schmitt *et al.*'s (1995) idea was further elaborated on by, among others, Schmitt and Mohiyeddini (1996), Mohiyeddini and Schmitt (1997), Fetchenhauer and Huang (2004), Gollwitzer *et al.* (2005) and Baumert and Schmitt (2009). Several studies also related this individual personality trait to contextual differences. The result is that, whereas Schmitt *et al.* (1995) regarded justice sensitivity as a stable personality trait, new studies found justice sensitivity to be a perspective-specific personality trait. They found that those individuals who reacted most heavily to unfair situations when they themselves were the victim were the people showing the least heavy reactions when observing injustice done to others. Also, those individuals high on justice sensitivity as a victim appeared keener on exploiting others for their own profit than persons low in justice sensitivity as a victim (Fetchenhauer and Huang, 2004; Gollwitzer *et al.*, 2005). It was thus argued that the personality trait 'justice sensitivity' varies according to the perspective of the respondent. Fetchenhauer and Huang (2004) and Schmitt *et al.* (2005) discerned between three dimensions: first, the sensitivity to being a victim of injustice, second, the sensitivity to observing injustice, and, third, the sensitivity to being able to profit oneself of a situation of injustice.

A criticism on the research reported above is that it has discussed the role of identity in justice concerns but has not elaborated on the identity concept itself. Recent research on the connection more thoroughly explores the identity concept (e.g. Clayton and Opotow, 2003; Skitka, 2003).

§2. The impact of relational factors on justice judgements

Shapiro (1975), Austin and McGinn (1977), Austin (1980) and Morgan and Sawyer (1979) conducted the first studies that explored variations in preferences for procedural models as a function of relational variety. They discovered that the choice between equity and equality as a principle of reward allocation was affected by whether the allocator expected to have future interaction with the other persons affected by the allocation. In other words, they explored variations in the application of an equality or equity rule to allocation decisions between *people in a continuous relationship and strangers*. Morgan and Sawyer (1979) for example observed friends and strangers. If they believed that the other received more than an equal share, study participants who were strangers to each other reacted competitively, while friends did not change their rate of competition. Austin (1980) looked into the behaviour of roommates as opposed to strangers. Roommates tended to overlook differences in task performance between themselves and their roommate and to apply an equality rule to the distribution of rewards after completing a task. Strangers, when they performed better on the task than their allocation partner, did take the difference in productivity into account. They thought that in this case, the application of an equity rule (that is, the distribution of rewards according to input) was justified. Note that strangers who scored *lower* opted for the application of an equality rule or a compromise between equity and equality. Previously, Benton (1971) had made a related distinction between friends and non-friends. Her study provided similar evidence on differences in the choice of allocation rules; she too found negotiations between couples of friends to be remarkably different from negotiations between couples of non-friends.

Barrett-Howard and Tyler (1986) looked into the relative importance of fairness to individuals involved in *emotionally intense relationships as opposed to those involved in emotionally detached relationships*. Fairness appeared to be the most important in relationships of medium emotional intensity. Concern for fairness was found to be less great in emotionally intense relationships and emotionally detached relationships. The authors hypothesised that the increased concern for fairness in relationships of medium emotional intensity was driven by a desire to protect positive but weak relationships.

Much attention has also been devoted to the relationship between procedural justice and *group belongingness or identification*. The traditional view of the relational model of procedural justice is that when procedures give individuals the feeling of being respected members of the group, and thus lead to positive feelings of self-esteem ('standing'), this leads them to consider those procedures to be fair.

Clay-Warner (2001), Tyler (2001a), van Prooijen *et al.* (2004) and Smith *et al.* (2006) confirmed this view, stating that people are more concerned with the fairness of procedures when they deal with authorities or members of a group with which they strongly identify than when they deal with members of other groups. This means that people are especially concerned about the symbolic value of procedures when they deal with their own group members and react more strongly to unfair procedures used within the own group than to unfair procedures used in groups with which they do not strongly identify. Likewise, de Cremer and Blader (2006; also de Cremer and Tyler, 2005) found that individuals with a strong need to belong care more about procedural justice than individuals with a weak need to belong. Those with a strong need to belong are more sensitive to cues about their position in the social group and whether they are valued members of the group than others.

Mossholder *et al.* (1998) conducted a study to test whether individuals' procedural justice perceptions were influenced by the procedural justice perceptions of the group to which they belong. Two previous, similar studies had found that individuals' opinions about the fairness of an allocation decision were affected by other *individuals'* opinions about fairness (Folger *et al.*, 1979; Steil, 1983). Mossholder *et al.* discovered that the same applied on a *group* level: in a study on employees, those employees belonging to units with higher perceptions of procedural justice reported greater job satisfaction than would have been expected based on their individual justice perceptions. Their judgements on procedural justice were influenced by their unit's general opinion on the issue.

From the studies above, it was concluded that group identification or level of inclusion functions as a mediator in the relationship between procedural justice and self-evaluation, such that procedural justice leads to increased self-esteem especially for people with a strong need to belong. This conclusion is consistent with psychological research indicating that individuals with low self-esteem have a heightened need for affiliation, and thus stronger belongingness concerns, than high self-esteem individuals. For this reason, low self-esteem individuals focus more on the quality of their relationship with others than high self-esteem individuals (Rudich and Vallacher, 1999).

Contrary to the findings noted above, Diekmann *et al.* (2007) argued that the relationship is actually opposite: according to these authors, perceived status affects the strength of individuals' reactions to procedural fairness. People perceiving themselves as high status individuals, it was found, possessed a greater sense of deservingness than people who perceived they had low status. This led high status individuals to react more strongly to unfair procedures than low status individuals, because the high status individuals believed that they *deserved* a fair treatment (see also Heuer *et al.*, 1999). This is not to say that low status individuals were not concerned about procedural fairness. However, high status individuals were more attentive to information on procedural fairness and responded more firmly to unfair treatment than low status individuals.

§3. The impact of contextual factors on justice judgements

The fundamentals of procedural justice theory, which had been developed by Thibaut and Walker in laboratory settings, have been confirmed in diverse real-life settings. One of those settings was the *criminal justice process*. Yet these studies have primarily looked at other stages of the criminal proceedings than the court phase. Lissak and Sheppard (1983) and Wells (2007) demonstrated the applicability of procedural justice theory to citizen-police encounters, and Tyler and Folger (1980) and Murphy (2009) found that procedural justice is more important to people who are involved in police-initiated contact than to those involved in citizen-initiated contact (the latter's satisfaction judgements are based primarily on police performance). Houlden (1980-1981) looked into the issue of plea bargaining procedures to find that those plea bargaining procedures providing for defendant participation were preferred to those plea bargaining procedures that did not. Landis and Goodstein (1986), Liebling (2007), Reisig and Mesko (2009) and Kubiak (2009) substantiated the concern for procedural justice among inmates, demonstrating that receiving respect from the prison staff is positively related to prisoner well-being and prison safety and order. Inmates who evaluate prison officers' use of authority as procedurally just are also less likely to engage in misconduct (see also the theoretical reflections on the issue by Sparks and Bottoms (1995) and Carrabine (2005)). Hucklesby (2009) found experiences of procedural fairness to enhance offenders' compliance with electronically monitored curfew orders. Finally, some studies investigated procedural fairness in work settings inside the criminal justice system. These found for instance that poor communication within the police organisation contributes to the use of deadly force by police officers (Lee *et al.*, 2010). Studies on prison staff report a positive influence of procedural justice on job satisfaction and organisational commitment as well as an inverse relationship between procedural justice and job stress, burnout and intent to leave the job (for an overview see Lambert et *al.*, 2010).

Procedural justice research has also been conducted in other settings than the criminal justice system, e.g. in a *political context* (e.g. Freeman, 2006; Tyler, 2009) and the *school/university environment* (e.g. Schmidt *et al.*, 2003; Chory-Assad and Paulsel, 2004). The context that has been most elaborated on, apart from the judicial context, is the application of procedural justice theory to *organisations* (e.g. Lissak and Sheppard, 1983; Chan Kim and Mauborgne, 1998; Mossholder *et al.*, 1998; Clay-Warner *et al.*, 2005; Brockner *et al.*, 2007; Cohen-Charash and Mueller, 2007; Pfeifer, 2007; Yang *et al.*, 2007; Li and Cropanzano, 2009; De Schrijver *et al.*, 2010). Research on procedural justice in organisations is concerned with conflicts of interest between employers and employees, particularly conflicts about wages and levels of perceived pay fairness, downsizing and layoffs and organisational misbehaviour.

One study especially worth mentioning in this section, because it presents an important pattern of thought in light of the expansion of procedural justice research into non-legal areas is a paper by Cohen (1985). Contrary to most other researchers in the area of organisational justice at that time, Cohen did not look for manners to apply procedural justice theory as it was developed in the legal context to organisations. Rather he pointed to the *differences* between procedural justice as applied to legal disputes and procedural justice as applied to employee-employer relations. Cohen observed that while the primary goal of dispute resolution in legal settings is to peacefully resolve conflicts, the primary purpose of organisations is the maximisation of profit. Hence while the third party that decides on the conflict resolution in legal settings is truly neutral and disinterested in the outcome, employers are not, as the outcome will decide on the distribution of organisational resources between wages and profit. Participation by subordinates risks being detrimental to the goal of profit-making. In order to prevent the balance from tilting in favour of wages, employees may be granted a form of 'pseudoparticipation', which likely causes dissatisfaction and frustration. In legal settings, the actors' interests are different, so Cohen argues. Decision makers in legal settings have no personal interest in the resolution of the conflict and therefore have less to fear from extended levels of participation of 'subordinates' than employers. The subordinates that participated in the dispute resolution most likely will be satisfied about it. The crux is that with this explanation, Cohen showed how similar participatory practices may yield different sentiments in the actors involved across different settings: in some circumstances being awarded an opportunity for voice may lead to frustration.

Gonzalez and Tyler (2007) have looked into *whether procedural fairness is more important to the same individual in different settings*. They found people to be attentive to procedural information especially when scrutinising the status of their position in a given group, because – according to the group-value model that these authors adhere to – procedural information informs them about their status in the group. Thus, procedural fairness information is used in particular when people decide whether to join a group, when members leave the group, the social fabric of which is then disrupted, when social changes indicate that one's position in the group is becoming weaker, etcetera.

A piece of work by Tyler *et al.* (1999) attended to *differences in perceptions of justice before and after experiencing a procedure*. The study in particular explored the relative importance of instrumental and relational concerns to people before and after experiencing a procedure. The study confirmed the relational model's predictions about the importance of relational concerns, but unravelled that these concerns are especially important *after* people have experienced a procedure. The participants' initial preferences for particular decision making procedures were determined by perceptions of the likelihood that the procedure would lead to a favourable outcome, and would thus serve their self-interest. However, after the procedures had taken place, they evaluated these procedures in relational

terms. The quality of the treatment received during the enactment of the procedure then became the chief determinant of satisfaction with procedures.

A Tyler and Caine (1981) study found that *procedural justice is more important in naturally occurring situations than in experimental settings*. This study has proved extremely important for procedural justice researchers because it legitimised the extrapolation of their results, which were at that moment mainly based on experimental research, to the outside world. Another situational variation was introduced by Casper *et al.* (1988). In response to the use of college students as subjects in early procedural justice research, these authors examined *the importance of procedural justice in high-stake conflicts*. They found that even in cases of serious crime, litigants' satisfaction with the outcome was highly influenced by their perceptions of procedural and outcome fairness, though procedural fairness was not deemed more important than outcome fairness (see also Lind *et al.*, 1993).

Similarly important are a number of studies exploring *how individuals react to unfair treatment in situations of uncertainty*, since the concept of uncertainty relates to the concept of control that has been so influential in procedural justice research. Uncertainty can be defined as a state of reduced control over one's life (van den Bos and Lind, 2002). Studies on the relationship between uncertainty and fairness judgements therefore deserve special attention. These studies came to the general conclusion that people have a greater need for and are especially concerned about fairness in uncertain as opposed to certain situations, that is, for example, when they are uncertain about an authority's trustworthiness (van den Bos *et al.*, 1998b), when they need to determine their support for future decisions, the consequences of which are uncertain (e.g. a governmental policy decision, See, 2009), when they are confronted with uncertain aspects of their lives (van den Bos and Miedema, 2000; van den Bos, 2001b), like for example a layoff or fear of death, or when they are dealing with threats to their selves (*i.e.* threats to feelings of self-worth) (Miedema *et al.*, 2001, 2006; Loseman *et al.*, 2009). In these cases, fairness, according to the authors, is used as a means to cope with uncertainty: "fairness (…) may provide protection against things people are uncertain about and/or because it makes uncertainty more tolerable" (van den Bos and Lind, 2002: 19). A concrete illustration comes from a study by Kranendonk (2011, see also Malsch *et al.*, forthcoming), who found victims of violent crime who were not sure about the perpetrator's intent to display a higher need for participation in the investigation of the case (voice) than those who were either sure that the offence had been intentional or that it had been an accident.

The studies mentioned above typically first induced uncertainty and then manipulated the procedure (typically a voice vs. no-voice condition). However, studies looking into the issue of uncertainty and procedural justice *in allocation decisions* found different effects. Miedema *et al.* (2002) and Loseman *et al.* (2009) put individuals in situations of self-threat (*i.e.* threats to feelings of self-

worth) to conclude that self-threat led individuals experiencing advantageous inequity to react more positively to inequity relative to when they did not experience self-threat. Recall that according to traditional equity theory, people in a situation of advantageous inequity experience inequity distress. However, this distress, so it seems, disappears to a great extent when people feel threatened: in such situations, they tend to react in self-centred ways (Miedema *et al.*, 2002). While according to the studies reported above uncertainty *necessarily* boosts procedural fairness considerations, these two studies suggest that *in situations of advantageous inequity and under conditions of self-threat*, accepting the favourable outcome allows people to protect themselves against the threat of uncertainty.

Most important to this dissertation are also the studies that have been conducted on *procedural justice in non-binding procedures*. Procedural justice scholars, though they have focused in particular on those dispute resolution procedures where third parties controlled the outcome, have also looked into procedural justice as it proceeds from non-binding dispute resolution procedures. As victim-offender mediation is a practice central to this dissertation, these studies deserve special attention.

Lind *et al.* (1983) were among the first to demonstrate that procedural fairness is important not only to disputants involved in binding procedures but also to those involved in non-binding procedures. High disputant process control procedures were considered more fair than low disputant process control procedures in both conditions. Tyler *et al.* (2007) too found procedural justice to be an important concern to those participating in a restorative intervention, and just like Hollander-Blumoff and Tyler (2008) demonstrated that procedural justice encourages the acceptance of negotiated agreements just as it encourages the acceptance of outcomes that were imposed by a third-party decision maker. Moreover, Hollander-Blumoff and Tyler (2008) found that experiences of procedural fairness encourage people involved in a negotiation to reach a better outcome; those experiencing a high level of procedural justice were for instance found to be more willing to disclose information that would allow reaching a better result. The respondents of a study by Shapiro and Brett (1993) considered mediation more procedurally fair than arbitration (third-party control over the outcome). Finally, looking at those involved in criminal trials specifically, the offenders surveyed by Barnes (1999) were more satisfied with restorative conferences in terms of fairness than with court. Wemmers and Cyr (2004, 2006) and Van Camp (2011) have looked into victims' perceptions of fairness as they result from participation in victim-offender mediation and found this experience to indeed positively affect perceptions of procedural justice. Daly (2005) reported similar results for those victims and offenders who participated in restorative conferences for juveniles.

In conclusion, though many of the studies reported above revealed that procedural justice effects are pervasive in different settings, thus offering thorough support for the theory, it seems that people are more attentive to fairness in some situations and contexts than in others. They are

especially attentive to procedural fairness information in real-life situations (as opposed to laboratory settings), in situations of uncertainty, after having experienced a procedure (as opposed to before) and when their group membership for some reason is re-evaluated. Finally, in informal conflict resolution settings too, procedural fairness has been found to be an important concern.

§4. Conclusion

The studies mentioned above hint that there are limits to procedural justice mechanisms: people may differ as to which elements influence their judgements on procedural justice in a specific context, at a specific time or within the framework of a specific relationship (which is why justice is said to have a contingent nature). While the early researchers were convinced that all individuals are most satisfied with an adversary procedure and all wish to have control, without further ado (I refer in particular to Thihaut and Walker), subsequent scholars concluded that no universally fair procedure can be developed: some circumstances may lead people to turn down control, some personal relations or characteristics may lead them to react differently to the violation of justice norms, etcetera. Justice research today departs from an understanding that whereas it once "aimed for the universal", "a particularized justice has more explanatory power" (Clayton and Opotow, 2003: 307). Recently, some attempts for integrative models have been presented (e.g. Skitka, 2003), which take into account the great variety of justice concerns and aim to answer questions on *when* different justice considerations are especially important to people. This dissertation too aspires to contribute to this 'when-question'.

The main points to remember from the overview given in this section, with a view to the current study's purpose and design, are those relating to variation in procedural fairness judgements as a function of contexts. The first crucial finding to keep in mind throughout the remainder of the dissertation is that procedural fairness information may be used differently depending on whether someone is reflecting about expectations and about how one *thinks* one will judge a procedure or about a lived experience. People are more concerned with procedural fairness after they have experienced a procedure than when they are reflecting about the procedure beforehand. Given the fact that I will interview respondents pre-trial and post-trial, this is important information.

A second finding to remember is that people who find themselves in a situation of uncertainty are more concerned with procedural fairness than others. The reason this finding is important to the current study is that people involved in a criminal trial indeed are faced with a lot of uncertainty. They become involved in a procedure over which they have little control. This is true not only for the criminal proceedings in a narrow sense; when people are faced with the offer for participation in mediation too they are often overtaken by uncertainty, as will become clear later on.

The third finding that needs to be kept in mind is that fairness matters to people especially in case they find that their status in the group is threatened. This obviously is applicable to those who are prosecuted for an offence. Their social status is reduced significantly given the disapproval of crime reigning in society. But victims too may experience that their social status is being intruded upon; processes of faulting victims for what has happened to them have been identified by several scholars (e.g. Lerner, 1980; Van Dijk, 2008).

Finally, the findings about the importance of procedural fairness in non-binding procedures are to be kept in mind, given the research question on whether procedural justice concerns play a role to people evaluating an experience with victim-offender mediation.

SECTION II. LIMITS TO THE EFFECTIVENESS OF PROCEDURAL JUSTICE MECHANISMS

It is the sign of a dynamic area of study when scholars begin to reveal boundary conditions on important past discoveries (Peterson, 1999: 322)

Introduction

In this section, I will present two recent hypotheses on justice judgements that have provided challenges to procedural justice theory. Contrary to the studies reported in the previous section, which showed that people may differ in the criteria that they use to decide on fairness but did hold on to the pre-eminence of procedural fairness concerns in justice judgements, the hypotheses that will be presented in this chapter suggest that outcome concerns in some circumstances *supersede* fairness concerns. The studies on which these hypotheses are founded have challenged the fair process effect in particular and thereby procedural justice theory in general, demonstrating that there are limits to the effectiveness of procedural justice mechanisms. This section gives an account of these hypotheses, which are fairness heuristic theory (§1) and the value protection model (§2). As said in the introduction to the dissertation, both hypotheses could present a serious threat to the restorative paradigm to the extent that they invalidate the importance of procedural elements to parties involved in a dispute. At the end of the section, a summary is offered on the allegations of each of the models and scholars' views on the relationship between models of procedural justice and the two new models are presented (§3).

§1. Fairness heuristic theory

Fairness heuristic theory was incited by Lind and his colleagues in a quest to integrate distributive justice theory and procedural justice theory. Both procedural justice researchers and distributive justice researchers were blamed for focusing on only one aspect of fairness judgements, neglecting other elements (van den Bos *et al.*, 2001). Fairness heuristic theory aims to integrate the two models.

The starting point for fairness heuristic theory is "the fundamental social dilemma" (Lind, 2001a: 61), which refers to the tension between self-interest and cooperative behaviour that people experience in all aspects of social life, all through the day. Even on the most ordinary days, people constantly need to make decisions about whether to cooperate in groups (e.g. their company) or whether to advance their own material interest. Examples of such decisions given by Lind are when a boss asks an employee to invest time in charity because this would enhance the company's reputation, when in fact the employee feels like he has too much work already, or when one needs to decide whether to go home from work early to spend the evening with one's family or work late in

order to finish some tasks. People confronted with this tension between self-interest and cooperative behaviour according to fairness heuristic theory refer to feelings of trust in order to decide what to do: if they give up self-interest in order to cooperate, they want to be able to trust that others will not take advantage of or exploit their cooperative behaviour (Lind, 2001a). As it would be cognitively too demanding to, every time such decisions need to be made, calculate the expected benefit of cooperation and decide whether others can be trusted, people trust on shortcuts when deciding whether to cooperate. One such shortcut is fairness. Fair treatment functions as a decision heuristic, that is, as a surrogate for interpersonal trust. Experiencing fair treatment leads people to act cooperatively: "group-mode is "switched on" when one feels one is being treated fairly and "switched off" when one feels one is being treated unfairly" (Lind, 2001a: 67).

How, then, do people form fairness judgements? Fairness heuristic theory is based on the research about uncertainty management presented above, showing that process information is important to people especially when they find themselves in a situation of threat or uncertainty. Fairness heuristic theory departs from the assumption that people who find themselves subject to a decision by a third party experience uncertainty. Therefore, they search for information on fairness, as a surrogate for trust, from the very beginning of their interpersonal contact with the third party (van den Bos *et al.*, 1997a, 1997b; Lind, 2001a). It is asserted that people base these fairness judgements on the information that is available first; this is called the primacy effect (van den Bos *et al.*, 1997b; Lind, 2001a; Lind *et al.*, 2001). If outcome information is available first, this is the information on which people will base their fairness judgements. Conversely, if procedural information is available first, fairness judgements will be determined by procedural information. The primacy effect is assumed to be the main reason why social justice research has consistently found procedural fairness information to be important to people involved in conflict resolution (Lind, 1995a; van den Bos *et al.*, 1997a; Lind, 2001a). As in most situations (e.g. trials) no outcome information is available at the beginning but procedural information is, the latter functions as a heuristic and is used to build fairness judgements. The robustness of the fair process effect, van den Bos *et al.* (1997a: 1044) write, "may not imply that [people] have a higher preference for procedural fairness compared to distributive fairness"; rather the effect may show so often for the mere reason that procedural information often is available first.

To summarise, fairness heuristic theorists argue that two successive phases mark the formation of fairness judgements. First, people learn about either the outcome or the procedure, secondly, they are informed about the other element. The theory claims that justice judgements are primarily based on the information that comes first (van den Bos *et al.*, 1997b). In situations in which outcomes cannot be judged – either because they are not yet available (van den Bos *et al.*, 1997b), because

people are unsure about the authority's trustworthiness (van den Bos *et al.*, 1998b; Lind, 2001a) or because the own outcome cannot be compared to the outcome of others (van den Bos *et al.*, 1997a) – people rely on procedural fairness information to judge the outcome. Procedural fairness information then serves as a decision heuristic, a cognitive shortcut. This implies that when people *do* have the information necessary to judge the outcome, that is, when they do know the outcome first or know whether an authority can be trusted, they need not rely on procedural information to judge the outcome. Fairness heuristic theorists, then, acknowledge that procedural fairness is often important to people (van den Bos *et al.*, 1998b), but only to the degree that outcome information is unavailable.

Though fairness heuristic scholars agree with procedural justice scholars that procedural fairness information may be the prime determinant of fairness judgements, they also point out that this information has little value when outcome information is provided first – van den Bos *et al.* (1997b) give the example of job applicants who are informed of the result of their application. In other words, people do not always *need* procedural information to form justice judgements. It is only used when the "most directly relevant" (van den Bos *et al.*, 2001: 62) information is not available. Recall that procedural justice theory states that people base justice judgements on procedural information regardless of the outcome, that is, also when the outcome is available first. This means that whereas procedural justice theory argues that procedural fairness information is higher in the hierarchy than outcome information, according to fairness heuristic theory, there is no pecking order.

Yet there are two nuances to fairness heuristic theory's claim about the unimportance of procedural fairness information in case the outcome is available. First, there may be situations in which the own outcome is available but people lack a relevant reference point about outcomes. In such situations, they necessarily rely on procedural information to scrutinise their own outcome as it is easier to interpret this information than to judge the own outcome (van den Bos *et al.*, 1997a, 1998a). An example is that of people who are deprived of information on other people's outcome and thus cannot compare their outcome to the outcome of others. Devoid of this information, it may be easier for people to assess whether they have been treated politely and with respect or whether they have had an opportunity to participate than whether their own outcome is just – procedures are then used as proxies for social comparison information (van den Bos *et al.*, 1997a, 1998a). Still, in case information about other people's outcome *is* available, people will use this social comparison information to assess their own outcome, not procedural fairness information (van den Bos *et al.*, 1998a). Fairness heuristic theory finds procedural information to be important *only if outcome information is not available*, just to "fill in the blank" (Lind, 2001a: 74), whereas supporters of procedural justice theory are convinced that people base justice judgements primarily on procedural information regardless of the availability of outcome information.

Second, as said, fairness heuristic theorists believe that justice judgements are based on the information that comes first. Lind (2001a) wrote that fairness judgements are stable, in the sense that people will not easily adjust their judgement on the basis of new information about fairness. Once they have formed their justice judgement, people are believed to cease looking for additional information that could make them revise their judgement. Only when the relationship to the group changes radically or some manifestly unfitting information shows up, people will re-evaluate their judgement. Since calculating is exactly what people avoid by using a heuristic, there would be little use in using a heuristic to then constantly adjust it. However, this is true only in case people feel that an outcome is *fair*. If they believe the outcome of a procedure to be unfair, people *do* go on to seek for information about procedural fairness (Lind, 1995b). Looking for reasons for the unfair decision, the procedure is carefully scrutinised. When the procedure appears to have been fair, people feel personally responsible for the unfair outcome and thus become frustrated, as "fair procedures illuminate personal deficiencies" (Schroth and Shah, 2000: 469). When undesirable outcomes have been obtained, unfair procedures are more beneficial to the person receiving the outcome. In that sense, it could be said that sometimes "unfair procedures have nice aspects", as van den Bos *et al.* (1999: 324) state. Several others have reported that people who are confronted with an undesirable outcome that results from a fair procedure are sometimes more dissatisfied than people who received the same outcome resulting from an unfair procedure (e.g. Kulik and Clark, 1993). This cannot be explained by the relational models of procedural justice as these assert that fair procedures enhance feelings of self-esteem regardless of the outcome.

As was to be expected after the long dominance of procedural justice theory, the van den Bos *et al.* experiments have met fierce headwind. One reproach levelled against fairness heuristic theory is that all studies on which the theory is based have manipulated only voice conditions, allowing subjects to either exert voice or not. The studies eliminated all forms of human contact, thus making it impossible for these interactional aspects of procedural justice such as respect and courtesy to play a role in justice judgements (Collie *et al.*, 2002). Collie *et al.* suggest that fairness heuristic theory for this reason cannot claim that process information is irrelevant in other contexts than those where only structural aspects of procedural justice are manipulated.

Second, van den Bos *et al.* (1999: 333) have admitted that for the reversal of the fair process effect to occur "manipulations should be very strong"; moreover, it seems to occur only when people are *instigated* to evaluate themselves (e.g. when they are told that they will be evaluated and afterwards will be assigned a place in a hierarchy on the basis of that evaluation). Attention must therefore be paid when generalising the results to real-life settings.

Third, fairness heuristic theory is a self-interest perspective on justice; it departs from a view on humans as *homo economicus*, as do distributive justice theory and Thibaut and Walkers' self-interest model of procedural justice, but contrary to the relational models of procedural justice. Though at first sight the views of these relational models of procedural justice and fairness heuristic theory seem competing, their differing stances should not be interpreted in this way. The main authors on fairness heuristic theory claim not to go against procedural justice theory but to the contrary to develop it to a further degree, elaborating on the question of *when* fairness concerns are most salient (Lind, 2001a).

Still I find that by explaining the robustness of the fair process effect by the simple fact that procedural information is usually available before outcome information and that it works "well enough" (Tyler and Lind, 2001: 81), fairness heuristic theory seems to weaken the foundations of procedural justice theory. First, it denies the social identity premise and the fact that "the real sting of unfairness (…) lies in the diminution of one's social self-identity" (Tyler and Lind, 2001: 78). Second, fairness heuristic theory seems to suggest that distributive justice information and procedural justice information can be used interchangeably, just depending on which information is and is not available (van den Bos *et al.*, 2001). Tyler in a 1996 publication too wrote that he had found that when people already knew the outcome of a decision making procedure, they relied less on procedural fairness information to assess the decision maker than when they did not, but still held on to the assertion that procedural fairness information is more important. Third, fairness heuristic theory cannot explain why people in some situations are willing to forego material interests, as the fair process effect has shown (Tyler and Lind, 2001). A final reflection on the theory is that it may provide a valuable explanation for why procedural fairness does not matter much when outcomes are available in cases in which the (un)desirability of a given outcome is clear, such as job applications, but there is a difference with people who receive a sentence, or whose assailant receives a sentence. They may find it difficult to judge whether a given outcome is (un)desirable: for example, what does it mean in concrete for someone to receive an eight months prison sentence, half of which will be suspended?

§2. The value protection model

To begin explaining the value protection model, I refer to a study by Kulik and Clark (1993). The study was one investigating how people who have not taken drugs react to the results of a drug test when they are told that they tested positive. The study participants who knew that the test results were inaccurate, because they knew they were clean, experienced frustration even when fair procedures had been used: they were less satisfied about outcome and procedure and more resentful and upset than those experiencing unfair procedures. Fair procedures thus did not form a cushion of support against the outcome to people who knew for sure that the outcome was incorrect.

The value protection model asserts that people involved in a decision making process, including those involved in criminal proceedings, not only seek for social identity needs or material interests to be realised, but first and foremost seek for the protection of personal identity (Skitka, 2002; Mayer *et al.*, 2009). Personal identity is translated into moral values and moral convictions. The value protection model claims that people by all means aim to protect these values against threat for these moral values enable them to feel like good and decent people (Skitka and Mullen, 2002b). This leads to the assertion that when the results of decision making processes contradict people's moral values and convictions, they will experience moral outrage (e.g. a desire to punish or a need for vengeance) and emotions such as anger, contempt and disgust (Darley and Pittman, 2003; Mullen and Skitka, 2006a). A common example found in the literature is that of abortion (e.g. Mullen and Skitka, 2006a). Abortion is a theme that many people have a clear opinion on; most people either approve or strongly disapprove of it. According to the value protection model, any decision that contradicts their value is likely to be perceived as unfair, no matter if the procedure that led to the decision was fair in terms of procedural fairness. What is more, the fairness of the decision making process will be devaluated, that is, fair process effects are significantly reduced in such cases (Mullen and Skitka, 2006a; Mayer *et al.*, 2009).

The behavioural consequences of experiencing a violation of one's moral values are called *moral spillovers* (Mullen and Nadler, 2008). On the one hand, it is asserted that people who experience an intrusion upon their moral values will feel a need to reaffirm their sense of self as a good person ("value affirmation", e.g. a need to help someone or to do something to reassure oneself or blow of steam, Skitka *et al.*, 2004: 745, 748). On the other hand, it has also been found that people who experience a transgression of their moral standards are more likely to engage in deviant behaviour (Mullen and Nadler, 2008). Moral mandates, then, may both facilitate prosocial behaviour and justify antisocial behaviour (Skitka and Mullen, 2002a). Haas' (2010) study into support for vigilantism adds to the understanding of the issue. Haas confronted Dutch citizens with a number of mock newspaper articles that described a vigilante taking revenge on the offender. The results showed that people are more supportive of a vigilante who takes revenge on an offender who has been acquitted by the legal system than of a vigilante taking revenge on an offender who has already been punished by the legal system. These findings back up the position that people have an innate need for guilty people to be punished.

The assertion that people's moral values play an important role when assessing the fairness of procedures in se is not new. One of Leventhal's (1980) justice rules in fact was an ethicality rule instructing that in order for people to feel fairly treated, allocative procedures should be compatible with their moral and ethical values, and Lind and Tyler (1988: 19) considered "the frequency with

which each procedure convicts the guilty and acquits the innocent", which they called decision accuracy, to be a determinant of procedural justice. Yet these authors considered this rule to be an objective quality of procedures, whereas the value protection model regards moral values as subjective and individual.

The central concept of the value protection model is the *moral mandate*. Moral mandates are "the attitude positions or stands that people develop out of a moral conviction that something is right or wrong, moral or immoral" (Skitka and Mullen, 2002b: 1420). A moral conviction is defined as "a non-negotiable, terminal, and fundamental psychological truth", "a strong and absolute belief that something is right or wrong, moral or immoral" (Skitka and Mullen, 2002a: 36, 2002b: 1420). Moral mandates are further described as "selective expressions of values that are central to people's sense of personal identity" (Skitka, 2002: 588). They are non-negotiable (Skitka and Mullen, 2002a, 2002b), and moral convictions are "seen in rigid and absolutist terms" (Skitka *et al.*, 2005: 908).

Moral mandates are thus attitudes that are based on moral convictions, expressions of core moral values; yet they are not to be understood as generalised orientations towards the world but as context-specific attitudes (see the word 'selective' in the definition just given). That is, moral mandates do not guide every single thought, feeling or behaviour; rather they are activated when people are confronted with specific issues (Skitka and Houston, 2001; Skitka, 2002; Skitka and Mullen, 2002b). Much-given examples are issues such as freedom, equality, abortion and the sanctity of life, the war on terror, capital punishment, civil rights for homosexuals and public services for illegal immigrants (Skitka, 2002), political party identification, environmental issues, human rights (Skitka and Mullen, 2002b), legalising drugs, nuclear power (Skitka *et al.*, 2005) and physician-assisted suicide (Skitka *et al.*, 2009). For example, people may have the moral conviction that killing another person is immoral. This will lead to a denunciation of abortion (this is, then, the moral mandate: it is the situation-specific expression of the heavily internalised moral conviction that human life is sacred).

Moral beliefs are experienced as imperatives, that is, they are not negotiable since compromising would mean to undermine one's conceptions of what is just and moral, and of what is good and true (Skitka *et al.*, 2005; Mullen and Skitka, 2006b; Skitka *et al.*, 2009). Furthermore, moral mandates are supposed to belong to the category of strong attitudes and are thus believed to be stable and difficult to change (Skitka, 2002); when threatened, they are likely to be defended vigorously (Darley and Pittman, 2003). Moral beliefs, as opposed to other strong but nonmoral beliefs, are thought to be marked by (Skitka *et al.*, 2005: 896-897) (1) a sense of universalism: moral beliefs apply across persons and contexts, (2) the fact that moral beliefs are seen as facts about the world "much like scientific judgments", (3) the capacity to function as an independent motivational force – to direct what people

think and do independent of other motivational forces, (4) the ability to justify actions taken in response to a transgression of a moral belief – you reacted 'because it is wrong to intrude upon a moral belief' ; there is no need for further explication, and (5) the intensity of the emotions that are elicited by transgressions of moral beliefs. But most importantly in view of this dissertation, moral mandates are believed to influence, and often determine, fairness judgements.

The assumption that outcomes are more important to fairness judgements than one assumes on the basis of procedural justice theory is quite amenable, looking at the results of studies on victim impact statements or victim-offender mediation. For example, it has been found that victims who file a victim impact statement would like more opportunities to voice their opinion about the sentence than they currently have (van Dijk and van Mierlo, 2009; Lens *et al.*, 2010) and that some ignore the prohibition to do so (Hoyle *et al.*, 1998; Graham *et al.*, 2004; Szmania and Gracyalny, 2006; Lens *et al.*, 2010). Others have observed that participants to victim-offender mediation often discuss what they believe the reaction to the crime should consist of (Aertsen, 2000, 2004; Lauwaert, 2009).

Looking at fairness judgements, then, the value protection model claims that when people have a moral mandate about an issue, the perception of fairness of the outcome of a decision making process concerning that issue depends on the consistency of the decision with the moral mandate. If the decision runs contrary to people's moral mandate, they will experience anger and injustice and consequently perceive both the decision and the procedure as unjust and illegitimate (Mullen and Skitka, 2006a). If the decision does not threaten their moral mandate, in other words, in case the decision is consistent with their own moral mandate, it will be perceived as just and legitimate (Skitka, 2002). Skitka and colleagues do not believe in procedures' capacity to provide for a cushion of support in case the decision is inconsistent with the moral mandate (Skitka, 2002; Mullen and Nadler, 2008; Bauman and Skitka, 2009) or in their ability to improve decision acceptance (Mullen and Skitka, 2006b; Bauman and Skitka, 2009); they consider procedural fairness information valuable only to justice judgements of people who do not have a moral mandate about the issue under consideration.

According to the value protection model, then, people's *outcome preferences*, when these are rooted in moral convictions, shape how they reason about fairness (Skitka and Mullen, 2002b). Citing Skitka and Mullen (2002b: 1427), "it is not just procedural treatment or what people learn first that shapes how they decide whether procedures are fair but also whether authorities and institutions conform to perceivers' sense of right and wrong, moral or immoral". Reacting against self-interest and relational models of procedural justice, it is said that "although people may be willing to sacrifice their material or social self-interest if authorities act in ways that communicate status and belonging, they may not be willing to similarly sacrifice their moral beliefs" (Bauman and Skitka, 2009: 41).

There is one exception to the belief that people who have a moral mandate do not consider procedural aspects of decision making. When the decision runs contrary to people's moral mandate, it was found, they do re-evaluate the procedure in order to find fault with the procedure for failing to arrive at the morally mandated outcome (Skitka and Houston, 2001; Mullen and Skitka, 2006b). This is the so-called 'motivated reasoning hypothesis' (Mayer *et al.*, 2009). There is a clear parallel here with fairness heuristic theory's assertion that people receiving outcomes perceived as unfair re-evaluate the procedure as opposed to those who believe that they received a fair outcome. People who receive a decision that matches their moral mandate do not look back on the procedure; the outcome then validates the procedure's legitimacy (Skitka and Houston, 2001). This stance is not that strange, considering that in procedural justice literature too, there are indications that the desirability of outcomes influences the importance people attach to procedural fairness. Lind and Tyler (1988) found that procedural fairness enhances outcome ratings especially in case the outcome is negative, and Brockner and Wiesenfeld (1996) show that procedural justice is more likely to have an effect on reactions to decisions in case outcomes are considered unfair or undesirable than in case outcomes are considered fair or desirable. In the latter case, procedural fairness information is less important to fairness judgements.

Contrary to the studies reported above, Mullen and Skitka (2006a) found no evidence for the motivated reasoning hypothesis: study participants did *not* show an inclination to re-evaluate the procedure after learning that the verdict opposed their moral mandate. This study's results leave us somewhat puzzled. They left Mayer *et al.* (2009) puzzled too. The authors concluded that flaws in Mullen and Skitka's methodology possibly account for their contradictory results.

In conclusion, the value protection model agrees with procedural justice theory on the importance of procedural fairness to people who have no moral mandate or people who have a moral mandate and see that it is threatened. However, contrary to the first case, fairness judgements in the second case are based exclusively on the inconsistency of the outcome with the moral mandate. Procedural information has importance only to blame it for the 'wrong' outcome; it does not alleviate the moral outrage caused by the outcome nor enhances decision acceptance: people may still reject the outcomes of fair procedures (Skitka and Houston, 2001; Mullen and Skitka, 2006a). "When people have moral certainty about what outcome authorities and institutions should deliver", Skitka *et al.* (2009: 569) argue, "they do not need to rely on standing perceptions of legitimacy as proxy information to judge whether the system works. In these cases, they can simply evaluate whether authorities get it "right"". That will then determine the authority's legitimacy (Gangl, 2003).

Early research on moral mandates illustrates the existence of moral mandates. Skitka and Houston (2001) had participants filling out a questionnaire to gauge the extent to which they agreed

with statements such as the following: "For justice to be served, the innocent must be acquitted and the guilty convicted"; "A criminal trial is just if it yields the correct outcome"; "It is extremely important to me that criminal trials arrive at the correct outcome, *i.e.*, that the guilty are convicted and that the innocent go free"; "The only just outcome of trials that involve defendants who actually committed the crime for which they are being tried is a conviction", and "The only just outcome of trials that involve defendants who did not actually commit the crime for which they are being tried is acquittal" (Skitka and Houston, 2001: 311). The results of the study indicated that people indeed seem to think about these items in morally mandated terms, that is, that they agreed with these statements and thus want to see the guilty convicted and the innocent acquitted.[15] In a follow-up study (Skitka and Houston, 2001), participants read different versions of a fictional newspaper article on a court case. Defendant guilt (guilty, not guilty, not clear), procedural fairness (proper or improper procedure) and trial outcome (conviction or acquittal) were crossed, which resulted in twelve different versions of the story. Results showed, consistent with the value protection model's predictions, that trial outcomes were perceived as fair when the guilty defendant was convicted and the innocent defendant was acquitted. As for those versions of the story in which it was not clear whether the defendant was guilty, trial outcomes were perceived as fair if the procedures used were fair. These participants, it was explained, have no moral mandate, therefore, their perceptions of procedural fairness were not affected by the outcome, whereas those people who read a story in which a guilty defendant was acquitted or an innocent defendant was convicted devaluated the fairness of the procedure. This held true even if in a third study reported in Skitka and Houston (2001), the newspaper article said that the defendant was shot by the victim's father out of revenge. The group of people who wanted to see the guilty defendant punished did not show differences in outcome fairness ratings when the defendant was 'punished' by being shot out of revenge or after a trial. As long as their morally mandated outcome – punishment – was arrived at, it did not seem to matter to the study participants *how* it was accomplished. Those people who were in doubt about the defendant's guilt did show lower outcome fairness ratings in case of revenge.

Remark, first, that the value protection model is a model explaining how people assess the fairness of the outcome of decision making procedures. It does not make predictions on how important procedural information is to people *while they are involved in* the decision making procedure.

[15] In 1988 already, MacCoun and Tyler in a study on citizens' perceptions of the jury found that citizens agree that it is desirable to convict guilty defendants and acquit innocent defendants, and that it is undesirable to convict innocent defendants and acquit guilty defendants. Also, the jury system was evaluated more favourably to the extent that its decisions squared with these presuppositions.

Second, remark that research on the existence of a moral mandate in the event of crime has examined its existence only with respect to people's perceptions on the appropriateness of punishment. It is not clear whether people also have a moral mandate on what would be the most appropriate punishment. Furthermore, it needs to be stressed that research on moral mandates has, to my knowledge, never studied victims of crime or defendants. The research mainly involved students, or, in second order, citizens. The current study will try to remediate both these deficiencies.

Third, remark that the value protection model concludes that "when people have a moral mandate about an outcome, any means justifies the mandated end" (Skitka, 2002: 594). This means that moral convictions may have a "dark side" (Skitka and Mullen, 2002a): they may bring people to disregard procedural safeguards, supporting for example the father of a victim who shoots the accused. It is rather worrying that some people are not concerned about *how* moral mandates are achieved, as long as they are achieved, Skitka and Mullen (2002a) write. Such attitudes provide the basis for extreme forms of civil disobedience when opposing moral mandates mark a society (Skitka, 2002), thus undermining institutional control and giving way to instability. In this respect, a Skitka *et al.* (2005) study illustrated that people high in moral conviction on a given issue show a higher likeliness to keep a social distance from people with a different view on the issue than people low in moral conviction on the issue. They show reluctance to have people with a different view on a moral issue play a role in their life, or even to sit next to someone with a different view on a moral issue. In a similar vein, Skitka *et al.* (2004) reported that anger and fear caused by disrespect for moral mandates may lead to lower levels of political tolerance for people with different beliefs.

In all, the studies supporting the value protection model show that the relative importance of procedural and outcome information may vary as a function of the issue under consideration. Procedural justice considerations seem to matter less in evaluations of morally charged issues. The value protection model is essentially an outcome-based model: it is outcome valence (*i.e.* whether the outcome threatens one's identity) that determines whether justice concerns are activated. If people's identity is not threatened by a situation, there is less need for them to scrutinise the procedural fairness of situations (Skitka, 2003).

§3. Summary

Van den Bos and his colleagues (2001) discern between three phases in the formation of justice judgements. The first phase is called the *preformation phase*; it considers the question when people start forming justice judgements and why they do so. The second phase, called the *formation phase*, is the phase in which the judgements are formed and considers the question how people form their judgements, that is, which elements are taken into account. The third phase, the *postformation phase*,

pertains to the use of these fairness judgements (e.g. is the judgement adjusted in light of new information?). I find it helpful to summarise the models revised throughout the second and third chapter in a table, answering the questions relating to the first and second phase for each of the models. Note that for the purpose of this analysis, I treat all the relational models of procedural justice as one model. The result is Table III-I below.

Table III-I: The why and how of fairness judgements: summary

Model	Preformation phase: why do people care about fairness and when does fairness become important?	Formation phase: how are fairness judgements formed (what are the determinants of fairness)?
Self-interest model of procedural justice	*When* When third party has decision control over an allocation decision. *Why* In order to secure material self-interest.	Process control and decision control.
Relational models of procedural justice	*When* When third party has decision control over an allocation decision. *Why* In order to secure one's social identity (need to belong to and be meaningful member of respected group).	Procedural fairness information, *i.e.* process control, voice/participation, standing, trust and neutrality.
Fairness heuristic theory	*When* When experiencing uncertainty or tension caused by the fundamental social dilemma. *Why* Because it reduces uncertainty.	Procedural fairness information or distributive fairness information, depending on which information comes first.
Value protection model	*When* When experiencing threat to one's moral convictions. *Why* In order to secure one's personal identity.	Outcome information.

The papers that I would like to end this chapter with are two papers by Skitka (2003, 2009). Skitka in these papers tackles the question of when people care about procedural justice and when they care about distributive justice, outcome favourability or moral issues. Her argument is that perspective matters: "how people interpret fairness depends critically on whether they are viewing a situation in terms of their material, social, or moral needs and goals" (2009: 98). Skitka from a thorough review of justice research in the former decades concludes that three perspectives have dominated the debate. These are (a) the homo economicus perspective represented by equity theory, relative

deprivation theory, distributive justice theory, the self-interest model of procedural justice and fairness heuristic theory, (b) the homo socialis perspective, represented in particular by the research programme of Lind, Tyler and their associates, and (c) the homo moralis perspective, embodied by the value protection model. Skitka develops a contingency model of justice to make a number of predictions about when people are most likely to take a homo economicus, homo socialis or homo moralis perspective. In doing so, she stresses that the models are not competing models, but that people's justice concerns may shift depending on their situation or that people may even interpret the same situation differently.

Skitka (2003, 2009) predicts that people will take a *homo economicus* (maximising self-interest) perspective when (a) their basic material needs and goals are not being met or are under threat, (b) material losses or gains are explicitly primed, (c) the relational context is defined primarily in market pricing terms, and (d) other identity issues are not particularly salient. She argues that people are most likely to take a *homo socialis* perspective when (a) their material needs are at least minimally satisfied, (b) their needs to belong and for status and inclusion are not being met (they are of low status) or are under threat, (c) the potential for significant relational losses or gains is made especially salient, (d) the dominant goal of the social system is to maximise group harmony or solidarity, and (e) a strong sense of interdependent identity, or interdependency concerns are primed. Finally, Skitka believes people are most likely to take a *homo moralis* perspective when (a) their material and social needs are minimally satisfied, (b) they witness an intentional and undeserved harm, (c) moral emotions are aroused, (d) there is a real or perceived threat to people's conceptions of moral order, (e) their sense of personal moral authenticity is questioned and (f) people are reminded of their mortality.

Skitka (2003) argues that a hierarchy exists among these justice norms. In concrete, she believes that people will not easily sacrifice relations to improve their material conditions and will not compromise their moral authenticity to enhance their social status. In this hierarchy she finds an explanation for, amongst others, the fair process effect. Indeed following this line of reasoning, it seems reasonable that people, once their basic material needs have been met, are willing to give up material interests if that contributes to their status, because social status is more important for these people's well-being than increasing material wealth. Remark that Skitka, one of the founders of the value protection model, admits that moral beliefs may only be important in case people's material and social needs have been minimally satisfied, thus no longer asserting that moral convictions are the prime determinants of perceptions of fairness in any circumstance.

One could of course object that this hierarchy may be applicable to Western societies, where the standard of living is rather high, but that it remains to be seen whether it can be sustained in third world countries where basic material needs often are not met. The literature on fairness judgements

is clearly written from a Western perspective. Yet Skitka's hierarchy indeed points out that in such cases where basic material needs are not met, material concerns will override relational concerns.

Skitka's papers provide an excellent summary of the current state of empirical research on social justice and confirm that the most important question in justice research up to date is "to specify *when* different conceptions of justice are more likely to apply" (Skitka, 2003: 288, my emphasis).

Part II. METHODOLOGICAL SET-UP

Today's justice researchers' goal is no longer to identify a single (legal) decision making procedure that excels in terms of procedural justice – the third chapter of the dissertation has shown that given the contingency of the justice concept it would simply be impossible to create one universally fair procedure. The task ahead that I take up in this dissertation is to help specify when different justice norms are most salient to people. This second part of the dissertation is dedicated to the research methodology that was selected to tackle this question.

Chapter IV. METHODOLOGY AND DESIGN OF THE EMPIRICAL STUDY

This chapter on methodology consists of three sections. In the first section of this chapter, the data collection methods will be spelled out. The manner in which the data were processed and analysed is explained in the second section. The third section is devoted to a number of reflections on research ethics and the quality criteria guiding social empirical research.

SECTION I. DATA COLLECTION

Introduction

In this first section, I will elucidate on the data collection methods that were used to provide answers to the research questions that were defined in the general introduction. I will explain the reasons for choosing a qualitative research design (§1), how participants were selected and recruited (§2) and which data collection methods were used (§3).

§1. A qualitative approach

The methodological history of procedural justice research is characterised by the use of quantitative methods and experimental designs. The current study differs in both respects, in that it is a qualitative study investigating justice judgements in naturalistic settings, though a quantitative element (a survey) was introduced as a complementary data source.

§1.1. A qualitative study

The study reported on in this dissertation was conducted using a primarily qualitative design. A qualitative strategy was deemed most appropriate for this study for four reasons. The first reason is that only qualitative designs allow asking open-ended questions to the degree necessary for the current study. An important limitation of justice research, which is due to the widespread use of quantitative methodologies, is that participants' answers are generally prompted by the response categories that are offered. Respondents are usually confronted with a pre-set list of aspects on which to rate a procedure. Lind *et al.* (1997), for example, asked respondents to rate procedures on six variables, *i.e.* procedural fairness, perceived voice, trust in the benevolence of others involved in the procedure, perceived status recognition, perceived neutrality and reported use of the procedures. When using response categories, respondents' attention is directed to those aspects of procedures that are advanced by the researchers and translated into pre-set response categories. Such studies typically fail to determine whether respondents would have *spontaneously* taken each of these aspects into account when making fairness judgements. Foddy (1993: 8), like Haller and Machura (1995), has mentioned that "respondents are more likely to endorse a particular option if it has been explicitly listed than they are if they have to spontaneously think of it for themselves". Quantitative designs do not allow, then, to determine to which extent respondents would have taken certain procedural aspects into account had they not been suggested to them. This is a first disadvantage of quantitative studies. A second disadvantage of quantitative studies is that these fail to verify if there are aspects of procedures that are taken into account when people make fairness judgements *other* than those that

were anticipated by the researchers, as, first, these cannot be mentioned by the respondents and, second, their attention is directed to other elements. Asking open questions allows finding out which aspects spontaneously pop up in people's minds when they are asked to evaluate an experience.

Of course, as Foddy (1993) indicates, one can never be completely confident that no elements are probed in additional explanations to open questions. Indeed if open questions are supplemented with additional clarification, examples quickly creep in. Also, interviewers' probes such as repetitions of key words may be selective and therefore may influence the direction of the conversation. Foddy furthermore warns that one should not assume that respondents will start their answers to open questions with those aspects that are most salient to them, because respondents may avoid addressing certain topics out of shame, because of social desirability, because the topics are threatening, or because they believe that they are too obvious to be mentioned. Yet to the extent possible I wanted to make sure that no topics would be suggested to respondents. I therefore decided to use a qualitative methodology. This is of course not to deny that the data that are obtained through interviews are also constructed in the conversation between the respondent and the researcher (Kvale and Brinkmann, 2009). Hesse-Biber and Leavy (2010: 105) describe the relation between the respondent and the interviewer as "a meaning-making partnership" and a "knowledge-producing conversation". Meaning is always constructed throughout the conversation, and this should be kept in mind, however much I tried not to prompt answers or specific topics.

The second reason for opting for a qualitative design is that (quantitative) studies asking respondents to rate procedures on preset aspects break up people's experience in different types of justice, thus failing to grasp the complete picture. Studies investigating the relationship between procedural justice and distributive justice, for example, typically ask participants to rate the importance of both types of fairness. Such studies' results convey the (possibly false) message that people indeed differentiate between the concepts of distributive justice and procedural justice. Yet Lind (2001) suggests that people may not differentiate between these different types of justice as justice researchers do. Their experiences are broken down into scientific categories that they themselves may not use. Qualitative designs do allow constructing an integrated, holistic picture of how people make fairness judgements. Citing Lind (2001b: 211):

> [A]lthough people can certainly distinguish between different types of justice, in the sense of giving distinct and distinguishable responses to questionnaire items asking about distributive justice, procedural justice, or interactional justice, the real impact of justice judgments depends on a more general overall perception of the fairness of a given relationship (…). It seems to me (…) that justice researchers have put too much effort into the delineation and differentiation of various types of justice judgments and that we have ignored some common themes and close relations that exist across types of justice judgments.

In order to fully capture the true experience of "victims of injustice", as Shapiro (2001: 236) calls them, justice research should direct attention to people's narratives about justice and invite them

through open questions to reflect about what exactly causes them to experience (in)justice. In contrast to quantitative methods, which cast social interactions in categories pre-defined by the researcher, qualitative methods lend themselves for a deep understanding of social interactions as they are experienced by the respondents themselves (Silverman, 2000; Bachman and Schutt, 2007).

A third reason for conducting a qualitative study is that using a qualitative methodology will allow making the elements advanced by justice researchers as important to litigants more concrete. Indeed the concepts of voice, standing, trust and neutrality, but also the concept of process control, have remained quite abstract, as the meaning of the concepts has been determined by researchers. Listening to respondents' stories about their experiences will likely allow making the concepts more tangible, illustrating them with concrete examples.

A fourth reason for using a qualitative research technique as primary data source is that the research questions concern an issue that relates to morality, ethics, and often difficult personal and emotional experiences. Qualitative designs allow the researcher to explain why certain questions are asked, which may be important as the issue may be threatening. Also, they allow participants to explain their opinions and clarify why they take the position(s) they take, which is indispensable as moral issues seldom can be explained in black-and-white terms. A good illustration is public opinion research: respondents are asked to judge on complex matters such as crime and criminal justice in polar opposite words (one is for or against a restorative intervention or a specific sentence), whereas opinions on these issues often are diversified, changeable and situated (Verfaillie, 2010, forthcoming). Qualitative designs allow tracing the *reasons* for people's opinions and positions.

As said, most procedural justice researchers have used quantitative designs. A notable exception is Van Camp's (2011) study. Goethals *et al.* (2005) too have used a qualitative design to study Belgian citizens' opinions on the criminal justice system, though procedural justice theory was not explicitly used as theoretical framework. I do not pretend that other researchers in opting for quantitative designs have opted for the wrong designs. In view of the fact that many of them aimed to construct general laws about how people make justice judgements, their choice for experimental designs was understandable. Quantitative research is highly suitable for the purpose of formulating general laws and exploring variations in the elements shaping justice judgements across times and places (Flick, 2006). Yet the four motivations mentioned led me to endorse a qualitative strategy.

§1.2. Naturalistic settings

The current study investigates justice judgements of people who experienced *a real-life encounter* with the criminal justice system. Recall that Thibaut and Walker's (1975) results relied wholly on laboratory experiments. The rationale behind their choice was that experiments allow for optimal

control of the variables possibly influencing the dependent variable and allow measuring their effect. For Thibaut and Walker, who aimed to detect clear cause-effect relationships, it was important to be able to "abstract from the rich reality of a process those basic elements that are its most essential characteristics" (1975: 5); otherwise it would have been impossible for them to prove the importance of procedural elements to justice judgements (Lind and Tyler, 1988; van den Bos, 2001a).

Today experimental studies randomly assigning participants to one or another condition have become rare. For a long time now, the focus of *procedural justice research* has been on whether the elements that were identified by Thibaut and Walker as determinants of procedural justice are present with people experiencing a real-life conflict. Yet *research on moral mandates* has almost invariably been conducted on students and observers in experimental settings. The current study will test the applicability of the value protection model's assertions to citizens who personally experienced a conflict, in particular one that is dealt with by the criminal justice system.

§2. Participant selection and recruitment

§2.1. Participant selection

The purpose of the present research was to investigate how people who encounter the criminal justice system as a victim or an offender assess the fairness of the system. The primary data therefore were collected from people who personally encountered the criminal justice system as a victim or offender. As one of the research questions aims to explore whether participation in victim-offender mediation influences the way these fairness judgements are made, I distinguished two groups of participants. The first group consists of people whose case was prosecuted and brought to court but who did not participate in mediation. The second group consists of people whose case likewise was prosecuted and brought before court and who in addition participated in mediation before the trial.

The reason why I opted to recruit people who participated in *victim-offender mediation* in order to gauge the extent to which participation in a restorative programme influences perceptions of fairness is that this is the leading type of restorative intervention for adults in Belgium. Conferences are only available to minor offenders and their victims, and circles have not (yet) been introduced in Belgium. Victim-offender mediation to the contrary is a very well-established practice in Belgium. It has been developed since the early 1990s and has been institutionalised by law in 2005. It is available in all stages of the criminal proceedings. More on the specifics of the programme chosen follows below.

It should be noted that the selection criterion for the first group was not merely these respondents' non-participation in mediation. After all, this group could include three categories of people, that is, those who did not receive an offer for mediation, those who received an offer for mediation but declined it and those who received the offer for mediation and wished to participate

but could not do so because the other party to the offence refused to participate. I decided to only include the latter group of people in the sample. This is mainly because if I would have included those who refused to take part in mediation and those who never received the offer, the number of respondents that could provide the information needed to investigate the relationship between restorative justice and procedural justice would have been too small. Indeed in such case, the sample would probably have been such that only those included in the second group and a small part of those included in the first group had had sufficient experience with mediation in order to meaningfully contribute to the answer to the overall research question guiding this dissertation. As I was aware beforehand that finding participants for the study could potentially be problematic, I chose to put the priority on gaining in-depth knowledge on the relationship between restorative justice and procedural justice, which might have been to the detriment of the possibility of comparing those who are open to mediation and those who are not. Yet on the other hand, one should not readily assume that those who declined the offer for mediation all refused because they did not like the idea of mediation in itself; fear for the offender or time constraints too may be reasons for declining an offer for mediation. In that sense, even if I would have included those who refused to participate, there would have been no guarantee that it would have been possible to compare those who like the idea of mediation and those who do not.

In further defence of the methodological choice made, I might add that the fact that I only selected people who are open to mediation does not mean that I excluded from the sample all those with negative views on the criminal justice system. Indeed, among those participating in mediation there are probably both people who are positive towards societal institutions such as the criminal justice system and therefore cooperate with such new initiatives and people who participate in mediation because they have low confidence in the criminal justice system's capacity of dealing with conflicts caused by crime.

§2.2. Participant recruitment

The purpose of the research required collecting data from victims and offenders who either participated in victim-offender mediation or did not because the other party to the conflict refused to. Essentially, then, the study required data collection from victims and offenders *who were interested in participating in victim-offender mediation*.[16] In order to gain access to these victims and offenders, cooperation of an organisation conducting victim-offender mediation was required.

[16] As I selected respondents at an early stage of the criminal proceedings, in most cases I did not know, at the time of the first interview, whether the respondent would eventually be included in the first or in the second group. At the time of selection, the criterion therefore was that people should exhibit an interest in participating in mediation.

In Belgium, different types of victim-offender mediation are available to adults. In 2005, a law[17] was passed allowing for mediation in every stage of the criminal proceedings. Mediation practices for adults at the time of writing are available at the police level (mediation at the police level), at the level of municipalities (mediation within the scope of administrative sanctions) and at the level of the public prosecutor. At the latter level, two types of mediation are available. In cases of relatively minor crime, prosecutors may offer what is called penal mediation. In this case, they await its result before deciding on prosecution. In more severe cases which the prosecutor decides should be prosecuted either way, mediation for redress (pre-sentence) can be offered. Finally, mediation can take place during the execution of the sentence (mediation for redress post-sentence).[18]

As this study probes into the importance of procedural and outcome-related information to victims' and offenders' fairness judgements before and after sentencing, the study participants were those victims and offenders who were interested in participating in *mediation for redress pre-sentence*. When suspects participate in mediation at the police level, mediation within the scope of administrative sanctions or penal mediation, and fulfil all requirements put upon them as a result of the mediation (e.g. pay compensation to the victim), they are not brought before court. Mediation for redress pre-sentence, to the contrary, does not affect the charges brought against the suspect. After the mediation process has been concluded, independent of whether it resulted in an agreement or if the suspect keeps to the agreement, the suspect is brought before the judge. Also, as the study was set up so as to investigate how fairness judgements are made *before* and after sentencing, those victims and offenders participating in mediation for redress post-sentence were not suited for participation in the current study. Therefore, the victims and offenders to be included in the sample were those interested in participating in mediation for redress pre-sentence.

Mediation for redress pre-sentence is in principle offered to all victims and offenders of crimes that the public prosecutor has decided to charge and bring before court.[19] It is not usually offered in cases that were dismissed by the public prosecutor.[20] For this reason it is applied mainly in cases of serious crime. Mediation for redress started as a pilot project in one Flemish judicial district (Leuven) in 1993[21], as the Research Group on Penology and Victimology of the K.U.Leuven set it up by way

[17] Wet 22 juni 2005 tot invoering van bepalingen inzake de bemiddeling in de Voorafgaande Titel van het Wetboek van Strafvordering en in het Wetboek van strafvordering, *B.S.* 27 juli 2005.
[18] For an overview of the different programmes and an impression of empirical research on these programmes see Beyens and Raes (2005), Van Doosselaere and Vanfraechem (2010) and Miers and Aertsen (forthcoming).
[19] In Belgium, public prosecutors have a discretionary power in charging crimes; they are not obliged to charge all crimes that our brought to their attention.
[20] Note that this is the usual practice at the time of writing of this dissertation, but that the 2005 law does not in se prohibit mediation for redress to be offered in other cases, such as those that are dismissed by the prosecutor.
[21] A detailed history of the origins and development of mediation for redress can be found in Aertsen and Peters

of an action research. Mediation for redress was gradually implemented in other judicial districts, to be implemented in all Flemish judicial districts by 2007 (Lauwaert, 2009). It was finally provided with a legal base by the 2005 law mentioned above. In Flanders (the Dutch-speaking part of Belgium where the study took place), mediation for redress pre-sentence is organised by the ngo *Suggnomè*.[22] Suggnomè is recognised and subsidised by the federal Ministry of Justice and the Flemish Community. Most importantly, all potential participants to this study (*i.e.* victims and offenders considering participation in mediation for redress pre-sentence) would encounter mediators working for Suggnomè some time soon after the prosecutor had decided to prosecute the offender. The recruitment of participants therefore would best be achieved through cooperation with Suggnomè. In August 2008, the organisation's cooperation was obtained.

It is important to know that the mediation model used by the Suggnomè mediators is a humanistic model of mediation, which means that it is a model that puts the communication between the parties central. It is not focused on the quick and rapid settlement of claims but on the process of communication.[23] Themes that may be touched upon by the participants during this process of communication are not only related to the material and immaterial damage. The participants can talk about the personal meaning of the facts for the victim and the offender, can ask each other questions, may offer and accept or refuse apologies, etcetera (Aertsen and Peters, 1998).

In Europe, there is great diversity in how victim-offender mediation services are positioned vis-à-vis criminal justice (Peters, 2000; Aertsen *et al.*, 2004). As for the relation between Suggnomè and the judiciary, one can speak of a good working relation and a multi-agency approach. First, the selection of cases is in the hands of the public prosecution service, and in some judicial districts, especially in the early days, the mediators are (were) closely involved in the selection of cases. Second, in each judicial district, a steering committee composed of members of the public prosecution service, investigating judges, lawyers, police officers, people working in the Houses of Justice and people working in the social welfare sector guides the local implementation of mediation for redress.

Participants to the study were recruited by the Suggnomè mediators of four Flemish judicial districts (*arrondissements*), *i.e.* the judicial districts of Brussels, Leuven, Mechelen and Turnhout. Victims and offenders who contacted Suggnomè or were contacted by Suggnomè between October 2008 and August 2010 were asked to participate in the study during their first meeting with the mediator. Those victims and offenders expressing a willingness to participate in the study gave the

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(1998), Aertsen (2000, 2004), Suggnomè vzw (2005) and Lauwaert (2009).

[22] The name Suggnomè is derived from the Greek word sun-gnomè. In Modern Greek it means 'agreement' or 'sorry', but in ancient Greek it was a verb referring to the process of creating a shared understanding of reality. Its meaning was broader; the focus was not on the agreement but on the process of creating it (see www.suggnome.be).

[23] See Van Garsse *et al.* (2005) for more insight into how the procedure of mediation is organised by Suggnomè.

mediator their consent to pass me their details. Some days later, I called them in order to offer them more information about the study and ask for their consent to participate in the study. Appointments for a first interview were then made. Remark that from now on, when I use the word 'mediation', it always refers to mediation for redress pre-sentence.

§2.3. Sampling method

The current study combined purposive criterion sampling and convenience sampling. *Purposive sampling* means to select a number of particularly information-rich cases for in-depth study (Patton, 2002; Hesse-Biber and Leavy, 2010). It is a sampling procedure that allows specifically selecting those cases that the researcher believes will serve the particular purpose of the study, instead of randomly selecting a wide variety of cases, many of which will most probably be irrelevant to the research question(s). *Purposive criterion sampling* (Patton, 2002) was used, which implies that the information-rich cases are determined on the basis of preset criteria. These criteria are derived from the study's purpose. As the overall goal of the current study was to understand how people who encounter the criminal justice system experience this encounter, all victims and offenders involved in criminal cases that were processed by the Belgian criminal justice system in Flemish judicial districts during the period of data collection were in principle eligible to be included in the sample.

However, a first selection criterion imposed itself as the study specifically searched to understand how the experience of having participated in mediation influences fairness judgements. Therefore, within the group of victims and offenders involved in criminal cases that were processed by the Belgian criminal justice system during the period of data collection, I selected only those who were offered to participate in mediation and took the offer. A second selection criterion imposed itself as another purpose of the study was to investigate whether the elements driving victims' and offenders' fairness judgements diverge before and after sentencing. Therefore only those victims and offenders who took the offer of participating in mediation for redress *pre-sentence* were selected.

The research questions did not urge setting selection criteria relating to potential participants' age, sex or ethnicity other than that they should all be adults (youngsters of 15-16 years old also were considered adults). Furthermore, the only offences that were excluded from the selection were traffic offences and cases that would be tried by an Assize Court. The reason for excluding traffic offences was that in these offences, victim and offender roles are not always clearly discernible, nor are those who unintentionally cause traffic accidents perceived as offenders the way those who intentionally commit offences are. Assize cases were excluded because of the small likelihood that these cases would be completely processed before the end of the study.

Privacy reasons and a self-selection process necessitated combining this purposive criterion sampling procedure with *convenience sampling*. First, as the privacy of all those participating in mediation was to be protected, I could not select the cases that matched the above criteria myself. The selection of cases appropriate for inclusion in the sample was in the hands of the mediators collaborating in the study. The mediators agreed to ask all the victims and offenders they met within the framework of mediation, during their first meeting with these people, if they were willing to participate in the study. Yet in daily practice, fulfilling this task appeared to meet with a number of difficulties. The mediators acknowledged that they did not consistently ask each and every one of the victims and offenders they met and that were qualified for inclusion in the sample to participate. They explained that they felt reluctant to invite, for example, victims who were still highly upset or inarticulate victims and offenders to participate in the study. Also, they admitted that as the question about participating in the study was to be asked during the first meeting with the victim or offender, they often forgot to drop the question, or felt reluctant to do so when they felt that the particular person already felt overwhelmed upon receiving the information relating to mediation. Mediators conceded that they did not want to burden these people with questions about participating in a study.

In conclusion, not all people eligible for inclusion in the sample were indeed invited to participate in the study. Those that were most likely to be included in the sample were those people open to scientific research and sufficiently eloquent to voice their opinion; those people who were heavily traumatised by the offence were less likely to be referred by the mediators. Likewise, those who agreed to participate in the study most likely did so to a certain extent out of gratefulness toward the mediator. Therefore, the opinions of those who did not have a good working relationship with the mediator probably are underrepresented in the sample.

Second, I depended on the research subjects, who were free to choose whether to participate. The fact that Suggnomè receives many requests for participation in scientific studies on mediation led to a third reason for employing a convenience sample. Suggnomè operates in fourteen Flemish judicial districts. As some of these districts at the time of the set-up of the current study cooperated in other studies, I could not select the districts from which to include cases in the study myself. Suggnomè's coordinator sent out a request for participation in the current study to the mediators of all districts. The mediators of three districts agreed to participate (*i.e.* the judicial districts of Brussels, Leuven and Mechelen). As I noticed throughout the year 2009 that data collection did not proceed well, a new request was sent out to a number of districts in October 2009, after which the mediators of a fourth district agreed to participate in the study (*i.e.* Turnhout).

Turnhout, Mechelen and Leuven are among the largest judicial districts in terms of the number of applications for mediation. The most recent information about the caseloads of the districts is found in Suggnomè's annual report of 2009.[24] In 2008, Turnhout received the most *requests* (N = 99), followed by Mechelen (N = 158) and Leuven (N = 131). Brussels is a medium size district in terms of requests for mediation (N = 80).[25] Looking at the *number of mediations* that were actually conducted, Turnhout is the second largest district (N = 112)[26], Leuven the third largest district (N = 101), Brussels a medium size district (N = 66) and Mechelen a small size district (N = 56).

At the start of the study I planned to recruit participants from October 2008 until April 2010. The recruitment of participants however turned out to be less obvious than expected and was therefore extended until August 2010. Several reasons may be advanced for the difficulties experienced in the recruitment of participants. First, people who are asked to talk about sensitive or delicate topics such as crime have been reported to be more reluctant to being interviewed than others (Adler and Adler, 2003). Van Dijk and van Mierlo (2009) for example experienced many difficulties in trying to reach victims to talk about their experience. Second, the mediators acknowledged that they did not ask every possible participant to participate in the study, for the reasons mentioned above.

The mediators indicated that the most common reasons for potential participants to turn down participation in the study were time constraints (both as in 'no time to participate in the study' and as in 'I do not want to invest any more of my time on this') and a reluctance to talk about the offence because of emotional distress. The main reasons for participation in the study were: helping out a student, the fact that participation in the study could possibly provide the participant with more information on the workings of the criminal justice system or on its rights, and participants' hope that through participation in the study they could contribute to modifying the criminal justice system.

Table IV-I on the next page presents the number of cases that were presented by the mediators during the time of data collection. A total of 54 respondents participated in the study.

[24] See http://www.herstelrecht.be/jaarverslag/jaarverslagsuggnome_2009.pdf.
[25] The average in 2008 was 95 a year per judicial district.
[26] The average in 2008 was 63 a year per judicial district.

Table IV-I: Number of cases referred to researcher each month of empirical research

2008		2009		2010	
Oct	2	**Jan**	0	**Jan**	4
Nov	4	**Feb**	0	**Feb**	4
Dec	0	**Mar**	0	**Mar**	3
		Apr	5	**Apr**	2
		May	3	**May**	1
		Jun	5	**Jun**	1
		Jul	2	**Jul**	6
		Aug	1	**Aug**	1
		Sep	1		
		Oct	3		
		Nov	5		
		Dec	1		

The selection of cases proceeded until August 2010. As the report was due for September 2011, I could not extend the selection of new cases beyond August 2010. The average case took between six months and one year to be processed by the criminal justice system, and all cases that were selected needed to be processed by spring 2011. In the end, due to the long time it takes for a case to be processed by the criminal justice system, this was not the case; twelve respondents' cases were still hanging in August 2011.

§2.4. Description of the sample

§2.4.1. First wave interviews

Age, sex, nationality and status Fifty-four people participated in the first interviews. Sixteen participants were female, 38 were male. All but two offenders were male. Seventeen victims were male, fourteen were female. Table IV-II below shows this distribution. Respondents' ages ranged between 15 and 76. One respondent was a Dutchman, the others were all Belgian.

Table IV-II: First wave interview participants by status and sex

	Victim	Offender	Total
Male	17	21	**38**
Female	14	2	**16**
Total	31	23	**54**

As for the nationality of the respondents, except for one Dutchmen, no foreigners were included in the sample. This observation merits attention because a significant part of those who encounter the Belgian criminal justice system do not have the Belgian nationality.[27] In Suggnomè's annual report of 2009, the most recent one at the time of writing, no information is included about the number of non-Belgians that participate in mediation. From personal communication with a number of mediators I learnt that these people do not often react to the letter offering them to participate in mediation. This most probably explains why there are few foreigners in the sample.

Distribution across judicial districts Twenty-two participants were referred by the mediators of the judicial district Turnhout, eighteen participants were referred by the mediators of the judicial district Leuven, eleven participants were referred by the mediators of the judicial district Mechelen, and three participants were referred by the mediators of the judicial district Brussels.

Participation in mediation Twenty-nine of the 54 participants participated in mediation for redress pre-sentence. Twenty-five participants did not, which means that a quasi uniformal distribution was obtained. Fifteen victims participated in mediation, sixteen did not. As for offenders, fourteen of them participated; nine did not, as Table IV-III below shows. Seventeen of the 29 (58%) participants that took part in mediation participated in direct mediation, which means that there was at least one face-to-face meeting; twelve people participated in indirect mediation. The 2009 annual report of Suggnomè, which was the most recent one at the time of writing, shows that only twenty percent of the mediations conducted in 2008 involved a face-to-face meeting. People participating in direct mediation, then, are overrepresented in the current study's sample.

Table IV-III: First wave interview participants: participation in mediation

	Victim	Offender	Total
Participant	15	14	**29**
Non-participant	16	9	**25**
Total	31	23	**54**

Relationship between victim and offender Twelve of the thirty-one victims had been victimised by a stranger; nineteen victims had a previous relation with the offender. They had been victimised by their husband (N = 2) or ex-husband/partner (N = 2), their mother (N = 1) or stepfather (N = 2), a

[27] According to data published by the Council of Europe (2011), on 1st September 2009 40,8% of the total number of prisoners in Belgian prisons was a foreigner. According to data of the Directoraat-Generaal Penitentiaire Inrichtingen (the department of the Belgian Ministry of Justice that is responsible for the administration of custodial sentences) (2010), the percentage of foreign detainees of the total Belgian prison population (average daily population) was 42,7% in the year 2010.

friend or acquaintance (N = 5), a love rival (N = 1), their brother (N = 1), an employee (N = 3) or a neighbour (N = 2). Sixteen offenders had victimised a stranger; seven had victimised someone they knew. They had victimised either their wife (N = 1), their child or a stepchild (N = 3), a love rival (N = 1), a friend or acquaintance (N = 1) or their employer (N = 1). This means that overall 28 cases involved a victim and offender who were strangers to each other and 26 cases involved victims and offenders who had a prior relationship. The Suggnomè data for 2008 show that 43 percent of the cases that were referred to mediation in 2008 involved strangers. In the current study's sample, then, victims and offenders who had a prior relationship are underrepresented.

Type of crimes Thirty-one respondents were involved in a crime against a person; fourteen people were involved in a property crime. The other nine respondents had been involved in a property crime involving violence (e.g. street robbery). It is not surprising that most crimes were violent crimes; according to the 2009 annual report of Suggnomè, in 2008 more crimes against a person were referred to mediation than property crimes (N = 577 crimes against a person (including sexual offences) versus 424 cases of property crime). The types of crime that mediators are most often confronted with are cases of intentional assault and battery (N = 244 out of 1056 in 2008) and all kinds of theft (including breaking and entering) (N = 282 out of 1056 in 2008). This distribution is reflected in the current study's sample (see Table IV-IV below).

Table IV-IV: Type of crimes in sample

Type of crime	N
Crimes against a person	**31**
Intentional and unintentional assault and battery	23
Partner violence	2
Sexual offences	4
Stalking	2
Property crimes	**14**
Fraud	1
Burglary and theft	13
Property crimes involving violence	**9**
Violent theft, (street) robbery	9
Total	**54**

One other attribute of the crimes that may be important with a view to the interpretation of the results is the degree to which there had been interpersonal contact between the victim and the offender. In 41 of the 54 cases, the victim and the offender had seen each other during the crime; the thirteen other cases all were cases of breaking and entering.

Prior experience with the police or the courts Thirty-four participants had experienced an encounter with the police before; twenty had had no prior contact with the police. Of the thirty-one victims, fourteen had never had prior contact with the police, seventeen had. The majority of participating offenders had had contact with the police before (N = 17 out of 23). Four of the thirty-one victims had a prior experience with the criminal courts; twelve had a prior experience with a civil court. One offender had a prior experience with a civil court; twelve had a prior experience with a criminal court.

Timing of interviews Due to large differences in timing of prosecution between judicial districts, the period of time that passed between the crime and the first interviews varied. Usually the interview took place four to six months after the facts, but there were cases in which more than one year had passed. More details can be found in annex 1.

§2.4.2. Second wave interviews

Age, sex, nationality and status Twenty-five people participated in the second wave interviews (fifteen victims, ten offenders). Eight of them were female, fifteen were male. Two offenders were female, eight were male. Seven victims were male, eight were female (see Table IV-V below). Respondents' ages ranged between 15 and 76. They were all Belgian.

Table IV-V: Second wave interview participants by status and sex

	Victim	Offender	Total
Male	7	8	**15**
Female	8	2	**10**
Total	15	10	**25**
Drop-out	*16 (13)*	*13 (4)*	***29 (17)***

As can be deducted from this table, 29 respondents dropped out along the way (sixteen victims and thirteen offenders). Participant attrition or drop-out is a problem characteristic of longitudinal studies (Bryman, 2008). The current study's attrition rate is 53,70%, which is a high level of sample attrition. If one however leaves aside those cases in which the duration of the criminal proceedings exceeded the length of the study (twelve cases), one arrives at an attrition rate of 31,48% (seventeen cases, numbers indicated between brackets). Attrition was due to several reasons. In five cases, I was unable to recontact the respondent, even after several phone calls and having sent a letter. In three cases, the victim had not registered as a civil party or injured person and was therefore never informed of the day of the trial, after which collaboration ceased. In four cases, the respondent indicated not being interested in a second interview or wanting to leave everything behind them after the trial. In four cases, the public prosecutor or an investigating court decided to drop the charges and not bring the

offender before court. Finally, one of the respondents would be interviewed together with his wife (a respondent too), but was too busy at the day of the interview to attend the interview.

An important question to be asked is whether those respondents who did not participate in the second interview differed in some respect from those who did. This is difficult to determine, yet I would say that the respondents who agreed to participate in a second interview (leaving aside those who *could* not participate; remember that twelve cases were still being processed when the data collection was stopped) were either those with a great sense of public responsibility and therefore with great interest in the functioning of societal institutions or those who were more upset about or impressed by their encounter with the criminal justice system and found support in being able to talk about their experience to someone.

Distribution across judicial districts Eight of the participants that could be interviewed after trial had been referred by the mediators of the judicial district Turnhout, thirteen had been referred by the mediators of the judicial district Leuven, three had been referred by the mediators of the judicial district Mechelen, and one had been referred by the mediators of the judicial district Brussels.

Participation in mediation Sixteen of the 25 participants to the second wave interviews had participated in mediation; nine had not. This means that there was no equal distribution. Ten of the sixteen respondents who had participated in mediation had met the other party face-to-face; the other six had participated in shuttle mediation. Table IV-VI below shows the detailed results.

Table IV-VI: Second wave interview participants: participation in mediation

	Victim	Offender	Total
Participant	8	8	**16**
Non-participant	7	2	**9**
Total	15	10	**25**

Timing of interviews Averagely, from one to four months passed in between the trial and the second interviews. One should know that the court pronounces its judgement some two to four weeks after the trial. After that, there was some delay in some cases due to e.g. the respondent not finding the time to go to the courthouse to search for a copy of the judgement, respondent illness, or the respondent being too busy with work, making it difficult to set a date for the interview. I refer to annex 1 again for the details of each specific case.

§3. Data collection methods

Russell Bernard and Ryan (2010) and Peräkylä (2008) distinguish between naturally occurring qualitative data and those qualitative data that are produced for the sake of the research. The data collected within the scope of this study belong to the second category of data, as data on how people form fairness judgements are not readily available to researchers studying the topic. The only naturally occurring data source on fairness judgements one could think of that would allow insight into these fairness judgements both before and after sentencing would be private diaries of victims and offenders who have encountered the criminal justice system. One could also think of television interviews with victims and offenders, yet, if at all available, these would most likely cover only post-sentence experience and obviously would not necessarily cover the topics needed. For the sake of this study, then, data were produced. They were collected through qualitative in-depth interviews, quantitative surveys and focus groups. Participants' trials were attended to the extent possible, yet these were not structured observations and are therefore not mentioned as a separate data collection method. The goal of my attendance of the trials was to show an interest in what was happening to the participants, not to collect specific data.

§3.1. A longitudinal study

The current study is a longitudinal study. Bryman (2008) defines as longitudinal studies those studies in which the same sample is interviewed on at least two occasions. The participants to the current study were interviewed twice: once before trial and once after trial. The reason for conducting a longitudinal study is that longitudinal studies allow observing respondents experiencing social processes *while they are experiencing them*, not afterwards, and talking to them while these processes are occurring (Charmaz, 2003). Longitudinal studies therefore are most apt to understand processes of social change and to document changes in people's point of view (Flick, 2006; Bryman, 2008). Longitudinal studies in addition have the advantage that data collection suffers little from retrospective censure, as the respondents' point of view prior to or at least at the very beginning of these processes have been documented by the researcher. The current study's purpose of understanding how people make fairness judgements on their experience with the criminal justice system was best served by selecting participants who were at the very start of this experience and to keep track of their experience through multiple interviews until the end of the experience. To this end, they were interviewed on two occasions: once before trial and once after trial. As Tyler and Lind (2001) point out, most procedural justice research has examined only post-experience evaluations; the current study may help fill this void.

The study's purpose would have been served even better by interviewing the participants at more than two occasions (e.g. immediately after participation in mediation, or some days before the court meeting) or by keeping track of their experiences through other methods. Interviewing participants more than twice however was not possible for practical reasons. I visited most participants at home (or, occasionally, in their office, in prison or at one of Suggnomè's locations) to conduct the interviews, which implied a lot of travelling time. It would have been unfeasible to visit each of the participants more than twice. In order to keep track of people's experiences anyway, the initial design of the study included the use of a diary method, asking respondents to keep a diary of their experiences in between the two interviews. Reading the diary would then allow me to keep track of respondents' experiences and feelings about events as they were occurring[28] (Butcher and Eldridge, 1990) and would permit identifying in detail the elements influencing their evaluations of the criminal justice system at specific points in the criminal proceedings. The design was based on Zimmerman and Wieder's (1977) 'diary-interview method'. This method is unique in the fact that the diaries kept by the study participants are not isolated research material but form the basis for the subsequent interview. The diary serves as a tool for generating questions.

I too intended to ask respondents to keep a diary of their experience during the time in between the two interviews. Diaries would have been good complements to the interviews as the participants in the study would during the time in between the two interviews experience a trial and possibly a mediation process, which are two events with an expected impact on their perceptions of criminal justice and the way they experience an encounter with the system. Evolutions in respondents' thinking about the criminal proceedings would be written down, free from any retrospective censure or problems of recall, and there for me to consult more or less as the time that the events that triggered the respondents to write occurred (Butcher and Eldridge, 1990; Corti, 1993).

However, I did not succeed in encouraging respondents to keep a diary on their experience. The first eleven respondents were asked if they would keep a diary; only two of them agreed. The low success rate led me to not ask subsequent respondents to keep a diary anymore, all the more as I experienced that the two respondents who started a diary only wrote about their experience two or three times. One often mentioned reason for not keeping a diary was that respondents did their very

[28] With the help of the Leuven Institute of Criminology coordinator, Stijn Vivijs, a webpage was developed for participants who preferred typing their diary to writing in a paper diary. Participants were given a password; upon logging into the website they entered an application that I created using *Question Mark Perception*, a software programme for the development of online surveys. The first advantage of proceeding with this software programme was that I would have access to participants' diaries at all times and thus would not need to await the participants' complete diary before starting the analysis. The second advantage would have been that I could ask participants additional questions very quickly and encourage them to keep writing by providing them with immediate feedback.

best to in their daily lives not constantly think of the crime and the criminal proceedings; keeping a diary of their experience obviously would have been counterproductive to this goal. Time constraints and 'just not being the kind of person to keep a diary' were other reasons for not keeping a diary.

The fact that the method of keeping a diary did not work did not completely surprise me; it was expected that it would not be self-evident for people to regularly write in a diary. After all, it is an extra burden. Yet I did want to try the method because in preparing it I had collected some examples of diary studies in medicine that reported good results (e.g. Jones, 2000; Convery *et al.*, 2005; Jacelon and Imperio, 2005; Milligan *et al.*, 2005) and I had not found any examples of the use of diary methods in criminology. In that sense, the current study can be seen as a methodological try-out of diaries in criminological research, which unfortunately did not succeed.

§3.2. Primary method: qualitative in-depth interviews

The purpose of the current study was to investigate which information is processed by people when assessing the fairness of the criminal justice system after a personal encounter. The interview format seemed best suited to collect data on this process of making fairness judgements, the main reason for which is that the research questions required avoiding prompting answers and thus a method that would allow asking open-ended questions. This was explained above. Focus groups could have served the purpose of our study too, were it not for the fact that the timing of the interviews could not be determined beforehand; these depended on the timing of the criminal proceedings. Also, there would be less time for each respondent to present a "thick description" of his/her experience in a focus group. Another reason for not conducting focus groups with the respondents is that the interviews concerned an emotional and personal matter; it might have been difficult to talk about this in the presence of others. Finally, respondents would most likely influence each other and answers would be prompted, while aspects salient in some respondents' minds would be overshadowed by other topics and would consequently not be mentioned.

Each respondent was interviewed twice: once before the trial (and possibly mediation) and once after the trial (and possibly mediation).[29] Table IV-VII on the next page shows the design; Table IV-VIII provides a resume of the tables presented on the former pages (Tables IV-II to IV-VI).

[29] In one case (respondent 32), the first interview took place *after* mediation; the initial appointment was cancelled and the planning of the face to face meeting did not allow conducting the first interview before mediation.

Table IV-VII: Design of the empirical study

	T1			T2
First group	First interview + survey (N = 25)	-	Trial	Second interview + survey (N = 9)
Second group	First interview + survey (N = 29)	Mediation	Trial	Second interview + survey (N = 16)

Table IV-VIII: Overview of sample

	Total group	Status		Participation in mediation	
		Victim	Offender	Yes	No
First wave interviews	54	31	23	29	25
Second wave interviews	25	15	10	16	9

§3.2.1. The use of semi-structured interviews

The interviews were semi-structured interviews. Semi-structured interviews are conducted using an interview guide that contains a number of keywords or the key questions to be asked to the respondent. The order in which the questions are asked or the topics are addressed is variable, depending on the natural course of the conversation and the respondent's line of thought (Bryman, 2008; Beyens and Tournel, 2009; Russel Bernard and Ryan, 2010). A specific advantage of semi-structured interviews as opposed to highly structured interviews is that though the researcher takes care to ask all questions in the interview guide, there is ample room for interviewees to add information on relevant topics that the researcher had not anticipated (Hesse-Biber and Leavy, 2010). To the end of the current study it was indeed crucial not to exclude in advance any elements that might shape respondents' evaluations of their experience with the criminal justice system.

The interview guides that were composed for the sake of this study can be found in annex 2 (Dutch original) and 3 (English translation). Mark that the English-language guides are translations of the original Dutch guides. The questions as they are described in the interview guide were not binding; they are exemplar. The specific phrasing of the questions was always context-sensitive. No major adaptations or changes were made to the interview guide to the first interview during the study, except that the questions on the topic of mediation were further developed after the very first interviews (e.g. the first version of the guide did not include a question on respondents' motivation to participate in mediation) and that the second of the four statements gradually fell into disuse because it often proved redundant. A number of questions turned out to be too vague and complicated as respondents had trouble understanding them. These questions were reformulated

during later interviews, but it was not necessary to adapt them in the interview guide. This explains why the questions as they appear in the Dutch guides are longer and more complicated than those in the translated version. To Dutch readers it is important to remark that a number of questions as they appear in the Dutch interview guides were formulated in a more understandable way as the study progressed and respondents appeared to have problems understanding some questions.

The interview guide to the second interview was also re-evaluated after a number of interviews, but the evaluation did not call for major changes except that, again, some questions during the actual conversations were formulated in a less complicated way. Below I discuss the interview guides to both interviews in detail.

§3.2.2. Interview guide to the first wave interviews

In line with Mortelmans (2007), five types of questions were formulated: (1) opening questions, (2) introductory questions, (3) transitional questions, (4) key questions and (5) closing questions. (As it is hard to delineate 'opening questions' from 'introductory questions', I consider these as one category). The *opening/introductory question* was a question inciting respondents to talk about a concrete event, *i.e.* the crime. This question was asked for two reasons. First, I was not familiar with the details of the event beforehand and otherwise would have lacked the necessary background to follow the respondents' line of reasoning. Second, starting off an interview with a question inviting respondents to describe a concrete event is a good way to let respondents get used to talking to the interviewer and to the interview situation without already having to undertake deep reflection. It is a relatively easy question for respondents (*relatively* easy, as it did of course concern an unpleasant event) and thus a good question to get the conversation started.

The actual interview started with the *transitory questions*, meant to gain insight into respondents' attitudes towards the criminal justice system and their prior experiences with the criminal justice system. Respondents were asked for their opinion about the criminal justice system and if they were familiar with the system. They were asked if they had any prior experiences with the criminal justice system and if they are close to someone who has encountered the criminal justice system. These questions were added for two reasons. First, the literature shows that prior experiences with the criminal justice system influence people's opinion about the criminal justice system. These transitory questions allowed measuring people's prior experiences with and basic attitudes towards the criminal justice system. Second, in responding to these questions, respondents could get used to the question-answer format and learned what was expected from them. Though conversation "is a basic mode of human interaction" (Kvale and Brinkmann, 2009: xvii), it is clear that an interview with a scientific purpose is experienced differently than everyday conversation. The interview setting differs from

normal conversation in that one person is asking questions and the other person is answering the questions, and the interviewer does not share his own opinions with the interviewee (Kvale and Brinkmann, 2009: 3). Hence there is a need for transitory questions. Yet as the introductory question solicited respondents to give an account of the offence, the natural flow of the conversation usually led me to first address respondents' experience with the police. As more and more interviews were conducted, it turned out that the logical sequence of events led to asking the questions that were meant to serve as transitory questions *after* the key questions.

The research questions leading this study revolve around how citizens who encounter the criminal justice system evaluate their experience. Specifically, the aim of the study is to find out when procedural elements and instrumental elements come into play. The *key questions* therefore focused on respondents' experiences with the police, with mediation and with the judiciary in the specific case. Broad, open questions invited respondents to talk about their experiences. I was careful not to prompt any specific elements that have been advanced by the theories about justice judgements. Respondents were also invited to talk about their expectations of the trial. The last series of key questions enquired about respondents' opinions about which punishment they would deserve (defendants) or which punishment they considered most appropriate for the defendant that was apprehended in their case (victims).

The conversation about respondents' experience with *the police* took off with a general question enquiring about how they had experienced the police's intervention. To many respondents this broad question sufficed to start talking extensively about the police intervention; their answers took the form of a story. Those respondents who gave short answers to this first broad question were asked more specific questions in order to encourage them to elaborate on the police intervention. They were asked how the police became involved in the case, which actions they had taken, and what the respondent thought about these actions. To respondents who did not spontaneously talk about the police's attitude towards them and others present at the time of the intervention, a question on this was asked explicitly. Respondents were furthermore asked if there was anything about the police intervention that they found peculiar or remarkable, both in a positive sense and in a negative sense. When people were ready talking about the initial intervention, including the phase in which they had made statements to the police, they were asked whether they had had any subsequent contact with the police and how they had experienced those subsequent contacts. Also, respondents were asked whether their opinion about the police had changed as a consequence of their experience.

Following the logical course of events, the next topic to be discussed usually was people's experience with *mediation.* This is because after people rounded off their account of the police intervention I would ask them when they first heard about the case again. Typically respondents

would recall that they had received a letter from the public prosecutor's office or a telephone call from a mediator. In defendants' cases, the police intervention sometimes had been followed by an encounter with an investigating judge, in which case this order was respected.

Respondents' experience with mediation was initiated with a general question, inviting them to talk about the manner in which they had become involved in mediation. They were asked if they had any prior mediation experience and if they knew that it existed. They were asked about their motivation to participate in mediation and what they expected of the mediation process. Many respondents on this occasion spontaneously attended to their particular worries concerning the mediation process and evaluated the process so far.

Following the sequence of events, the next topic to be addressed usually was *the trial* to come. I solicited for respondents' opinions about the fact that the defendant would be brought before court. They were asked about their expectations about the trial and if they felt any anxiety or had any worries about the trial. Also, they were explicitly asked if they would attend the trial themselves and if they planned on speaking during the trial, after which the reasons for these decisions were discussed. Those respondents who had prior experience with a court of law were invited to talk about this experience and to advance suggestions, if any, for improvement of the legal proceedings.

During the course of the conversation, respondents would usually spontaneously address the topic of *punishment*. At these occasions the 'moral mandate questions' were posed to the respondent. Victims were asked if they felt that the defendant should be punished and if so, which punishment they considered most appropriate. Defendants in turn were asked if they thought the state had a right to punish them and if so, which punishment they considered most appropriate. They were invited to thoroughly reflect on the reasons for their stance.

Near the end of each interview, I confronted the respondents with a number of statements. They were invited to reflect extensively about these statements, indicating why they did or did not agree with them. The statements were the following:

- Statement 1: What concerns me most in this case is that the sentence will be correct.
- Statement 2: Regardless of what the criminal law prescribes, I think the only just verdict/sentence in this case is the verdict/sentence that I consider most appropriate.
- Statement 3: If I feel that I have been treated fairly in this case, it will be easier for me to accept a verdict/sentence that does not match the verdict/sentence that I have in mind.
- Statement 4: It does not matter to me how the police and the judicial actors treat me, as long as they make sure that the defendant is punished (victims)/It does not matter to me how the police and the judicial actors treat me, as long as they make sure that I will not be punished too severely (defendants).

The statements were not straightforward and therefore were good instruments to make respondents' implicit assumptions more explicit. Yet the third statement turned out to be too abstract for respondents; they were asked a hypothetical question on a complicated issue. The statement was made more comprehensible by asking a number of illustrative questions, e.g. 'Would your attitude towards the sentence to be imposed change if the police treated you disrespectfully?', 'Would unfair treatment by the police influence your opinion about the most appropriate sentence for the offender? Can you imagine that you would have, so to say, a greater feeling of revenge?'.

The interviews were closed with a number of *closing questions*. Respondents were asked if there was any topic that I had discussed during the interview that they had not reflected on before. They were invited to add extra topics to make sure that no relevant aspects of their experience with the police, the criminal justice system or mediation had been overlooked. Finally, participants were asked if they had any further questions about the study. After the interview, the respondent and I made agreements about how the respondent would inform me when he or she was informed of the date of the trial and about how to contact me.

In Flick's (2006: 256) terms, the initial questions enquiring about respondents' experience with the police, the criminal justice system and mediation were *open questions*. Throughout the interview, I tried to move the conversations from, in Kvale and Brinkmann's (2009) words, a factual level to a meaning level. In some interviews it proved difficult to, after asking respondents to talk about a lived experience, move them beyond the level of a mere description of events to the level of how they give meaning to these events and how they perceive the fairness of these events.

The questions about respondents' opinion about punishment, their need to speak in court and attend the trial as well as the statements were more *theory-driven, hypothesis-directed* questions. The questions about punishment aimed specifically to test whether respondents had a moral mandate as predicted by the value protection model; the statements challenged respondents to make connections between procedures and outcomes and thus to make relations between elements of procedure and elements of outcome more explicit. Flick adds a third category of questions, *i.e. confrontational questions*; these are questions that confront the respondent with competing views. The analysis of the interviews shows that more confrontational questions were asked as I had conducted more and more interviews, as I was gradually confronted with different opinions.

§3.2.3. Interview guide to the second wave interviews

The second interviews served to define the determinants of respondents' evaluations of their encounter with the criminal justice system. In order not to prompt any answers, the interviews started with a broad, open question: respondents were asked 'What would you start with when asked

how this experience has been for you?' The answer to this question would determine the topic to be discussed next; unlike in the first interviews the questions were not posed in the chronological order of the events. The main topics that were addressed throughout the second interviews were mediation, the trial and the sentence. The interviews were closed with a number of general questions.

As the second interviews concerned a lived experience, most respondents talked fluently about the three topics mentioned. With respect to respondents' experience with mediation and their view on the sentence, general questions enquiring for their opinion sufficed. As to the trial, a number of additional questions were prepared. After they had finished their own account of the trial, respondents were asked to describe the courtroom and give their impressions about the room. They were asked to describe the judge and the public prosecutor. Also, I enquired as to whether respondents felt that they had been sufficiently involved during the trial. They were furthermore invited to reflect on whether the trial had met their expectations. Finally, they were asked both which event or which aspect of the experience had been the most frustrating, and which one, if any, they thought had been (the most) positive for them.

After the concrete events had been discussed, respondents were confronted with more wide-ranging questions. First, they were asked which lessons they had learned from their experience, and if they had any advice for people who would have to go through the same experience. Second, they were invited to think about whether there was something that with hindsight they would have done differently during the process. Third, they were asked whether they had suggestions for concrete improvements to be made to the criminal justice system. Fourth, interviewees were confronted with a finding from the Belgian Justice Barometer, stipulating that people who have encountered the criminal justice system are less positive about the system than people who have never had a personal experience with the criminal justice system (Parmentier and Vervaeke, 2011), and asked how they would explain this finding. Fifth, I asked respondents whether their opinion on the criminal justice system had changed. Sixth and finally, they were asked whether, if it had been possible, they would have prevented the conflict from going to court and solved it directly with the other party, assisted by a mediator. After this, the respondents were invited to add extra topics and asked if they had any questions for me. Some took this opportunity to ask what would happen with the information gathered; they were interested in whether the findings would reach the government.

The very last question that was asked during the second wave interviews did not concern respondents' experience with the criminal justice system but with the study. As Kvale and Brinkmann (2009: 28) write, change is an important aspect of interviewing: "the process of being interviewed may produce new insights and awareness, and the subject may in the course of the interview come to change his or her descriptions and meanings about a theme". Both Kvale and Brinkmann (2009) and

Charmaz (2003) rightly observe that in the course of an interview, subjects may discover new aspects of topics that are discussed, discover relations, and gain insight into their own actions and situations: "[t]he questioning can thus instigate processes of reflection where the meanings of themes described by the subjects are no longer the same after the interview" (Kvale and Brinkmann, 2009: 31). Bryman (2008: 51) calls this a "panel conditioning effect". In order to assess the extent to which this process of change had occurred with the respondents to the current study, they were asked if participation in the study had changed their opinion on the topics discussed in any way.

§3.2.4. Practical information and general remarks on the interviews

Let us now turn to some practical aspects concerning the interviews. All interviews (N = 79) were conducted by me personally, and all were conducted in-person. The first interviews lasted on average 65 minutes; the second interviews averagely lasted 76 minutes. Most interviews took place at participants' homes (N = 62). The other interviews took place either in one of the other participants' home (N = 1), in my office (N = 5), in the participant's office (N = 4), in prison in case the defendant was detained (N = 5) or in a meeting room in one of Suggnomè's buildings (N = 2). All interviews thus were conducted in quiet places deprived of background noise or distractions any other than, at some occasions, participants' children, telephone calls or visitors. All interviews except one were conducted in Dutch. One participant's mother tongue was French; the reason why he had been approached by a Flemish mediation service was that the bilingual offender had chosen for the trial to be conducted in Dutch. During the first interview the respondent spoke Dutch, but he preferred to speak French during the second interview.

A precondition to be able to conduct high-quality interviews about sensitive topics is that the interviews take place at places familiar and convenient to the respondents. These places would ideally be respondents' homes (Adler and Adler, 2003). Most interviews conducted for the sake of the current study indeed took place at participants' homes or offices. As the interviews occurred in their familiar surroundings, respondents likely felt reasonably comfortable during the interviews. Also, they did not have to spend time travelling for the interview, nor did they have to make travel expenses. As all interviewees were offered a choice on where to conduct the interviews, and were explicitly told that interviews could take place in other locations than their home if they wished so, feelings of intrusions upon privacy, I may assume, were limited. All respondents were free to choose the time and date that the interview would take place.

As a researcher, I felt that on most occasions I could build good rapport with the interviewees. On a number of occasions however I felt that this was difficult. This was sometimes due to the respondent being hurried (N = 1) or ashamed to talk about the offence (N = 2). In other cases

(N = 2), the respondent's experience was very limited, as a consequence of which the interview lasted only about twenty minutes and was simply too short to actually build rapport. Also, in one case I realised when listening to the audio tape that I had not respected the respondent's rhythm and pace and had been too quick in firing questions at the respondent. At another occasion I realised, immediately after having done the interview, that I had not been sufficiently concentrated during the interview myself and did not do well enough. In one case I felt that the respondent considered me a very naïve person at first, yet throughout the interview I felt his respect towards me grew and at the end he even said that he had been "glad to finally be able to talk to someone intelligent". Building rapport succeeded best with upper middle-class respondents as they were most eloquent and articulate and usually most interested in the study in itself. Overall, some respondents told me that they liked talking to me because they thought I was a calm person.

Though methodology books stress the importance of the interviewer, not the interviewee, leading the conversation and stopping respondents who keep talking about irrelevant topics, I seldom interrupted respondents who talked about a topic that at first sight was not directly relevant. This was in part because that would have harmed the interviewer-interviewee relation, but especially because I did not want to exclude any elements of their experience as irrelevant on beforehand.

Most respondents were in neutral moods during the interview. Though the conversations concerned difficult experiences and it was to some emotional to talk about these experiences, most respondents talked neutrally. No major mood swings were noticed except for two respondents who shortly cried during the interview. When feelings were brought into the open they concerned not so much sadness, outrage or grief but annoyance and disappointment about and feelings of being misunderstood by the criminal justice system and its actors and, occasionally, shame.

It is difficult to know as an interviewer whether respondents felt upset after the interview. From my own experience it is important to, after having brought the actual interview to a close, always go along with respondents who after the interview engage in small talk. I clearly felt that some respondents needed that to bring the interview to a mental close, so I allowed them to – this is what Charmaz (2003: 315) points to when indicating that participants should always be brought back to "a normal conversational level" before leaving them. I never left a respondent that was worried after the interview without trying to bring this person back to a neutral state of mind (though this happened only once or twice), and experienced that humour too was important during and after the interviews. In all, none of the interviewees reported being more upset after the interview than before. Instead, a number of them openly expressed that participating in the study had been good for them, that they had experienced it as a kind of therapy and that it had felt good that someone was interested in their story at a moment when their peer group had grown tired with listening to their story.

As the interviews concerned a sensitive topic, *i.e.* crime and victimisation, there was a likelihood that respondents would refuse to answer specific questions because they found them threatening or too intrusive. None of the respondents however explicitly refused to answer any of the questions. Of course one should take into account that some people may not be sufficiently assertive to refuse to answer a question, but as an interviewer I seldom got the feeling that respondents experienced the questions that were asked as threatening. Only on one specific question, *i.e.* the question on offenders' motivations to participate in mediation, I received one or two evasive answers.

The current study did not raise any gender issues relating to differences in gender between myself and the respondents, nor did any class issues seemed to play a role. As all respondents were Belgian or Dutch, no ethnic or cultural barriers stood between me and the respondents either.[30] As a researcher talking with a variety of people I was cautious not to create status differentials. The telephone calls during which the respondent and I arranged a time and place for the interview often conveyed some information about participants' social status. I would adapt my clothing so as to match any environment I suspected I would run into and not create a distance to the respondents.[31]

As I was aware that especially towards (some) defendants I would have to clearly communicate a non-judgemental attitude in order to make them feel comfortable to talk about their offence, I paid special attention when approaching them. I was very well aware that though I would never purposely show judgement there is a great danger for researchers approaching offenders to unwittingly keep a distance that the respondent would feel. In this, researchers are persons like anyone else. So I made sure that I approached defendants, especially those in detention, with a smile and a firm handshake expressing respect, prepared myself to hearing stories that would potentially be appalling and meeting people whose acts would potentially shock me, and paid special attention never to show any dismay or shock in response to anything the defendants told me. Similar to Adler and Adler (2003), who report about their encounters with preadolescents telling them about deviant activities, I was very well aware that the smallest sign of moral indignation from my side would invoke reluctance in defendant respondents to continue the interview. As I interviewed more and more defendants, however, my own initial prejudices about offenders, which I must admit were present at the outset of the study, faded and I became much more neutral towards people who committed an offence.

To the current study it would have been detrimental had the respondents associated me as a researcher with the criminal justice system, as this would impede them from giving honest answers to

[30] The Dutch culture is highly similar to the Belgian culture.

[31] Something like clothing may at first sight seem a trivial issue to discuss when describing field work, but Nuytiens and Scheirs (2011) have recently confirmed that when entering a field, clothing is one of the things on which a researcher is judged and that determines in part how the respondents will behave toward the researcher.

my questions. But the respondents seemed well aware that as a researcher I was independent of the criminal justice system. Only one respondent, who was quite desperate about the lack of progress that was made in her case, asked me if I had any contacts within the criminal justice system that I could use to make her case progress. Furthermore, many respondents asked me questions about the criminal justice system. They asked, for example, for advice on whether to engage a lawyer. On simple questions (e.g. will there be an audience in court?) I provided them with an answer; for more difficult and juridical questions I referred them to their lawyer or to a House of Justice (*Justitiehuis*).[32]

§3.3. First supplementary source of data: quantitative surveys

In order to assess respondents' perceptions of different aspects of procedural justice in a more structured way, they were after the interviews asked to fill out a questionnaire asking them to reflect on elements of procedural justice on the one hand and on the outcome on the other hand. The questionnaire also proved helpful in order to elicit respondents' comments on aspects of procedural justice that had not come up during the interviews.

§3.3.1. Design of the survey

After each interview, both the first and the second wave interviews, the respondents were invited to fill out the survey. The survey, which can be found in annex 4 (Dutch original) and 5 (English translation), contained 29 statements, each of which represented one of the elements of procedural justice, *i.e.* standing, trust, neutrality, voice, process control or decision control or related to sentencing. All statements on procedural justice concerned the procedure *in court*. Each of the seven elements was operationalised by means of three to four statements, asking respondents how important the element reflected in the statement would be for them when they would be in court. The first statement, for example, was "[It is very important to me that] the judge will be impartial and will favour neither party". This statement was one of the statements representing the element 'neutrality'. The second statement was "[It is very important to me that] the judge will treat me with respect, friendly and politely". This statement represented 'standing'. The importance of each of these statements to respondents was measured via a seven-item scale; a higher score reflected greater importance. Based on Foddy's (1993) advice to always include filters in questionnaires in order to prevent respondents feeling undecided about an item from giving a substantive answer, and thereby

[32] In this respect too I can refer to the paper by Nuytiens and Scheirs (2011): these researchers too describe how their respondents asked for their advice on specific matters, and how it is difficult as a researcher to know exactly how to respond to such questions and requests. The authors in their paper plea for more debate in criminological literature on the place of emotions in and the consequences of researcher emotions for criminological research.

confounding the results, I included a middle category. In order to test the validity of the survey, I conducted two pilot studies and each time subjected the data to an exploratory factor analysis.

a. *First pilot study.*

The first pilot questionnaire consisted of 22 statements. Four statements related to standing, three statements related to trust, four statements related to neutrality and three statements related to voice. Two statements represented process control, three statements represented decision control and three statements gauged respondents' view on sentencing. Each of the statements was rated on a seven-point Likert-like scale ranging from 'extremely unimportant' (1) to 'extremely important' (7). One hundred and forty-seven students of the second bachelor criminological sciences at the K.U.Leuven participated in this first pilot study in September 2008.

The data were subjected to a factor analysis in order to inspect whether the statements that were designed so as to reflect a given concept indeed did. The goal was not to eventually conduct an analysis on the different scales, therefore, it may seem odd that a factor analysis was run, but I did so in order to make sure that the items that I would work with indeed properly illustrated the concepts.

Before running the factor analysis, I inspected whether the data were indeed suitable for conducting a factor analysis. The correlation matrix was inspected and a KMO test and a Bartlett's test were conducted. As the KMO value was .767 and the Bartlett test was significant I concluded that the data were fit for factor analysis. The data were then subjected to an exploratory principal components factor analysis (PCA). In order to determine how many components to retain, I checked the eigenvalues of the items in the table 'Total Variance Explained'. The Kaiser-criterion holds that only those items with an eigenvalue higher than one should be retained. Six components had an eigenvalue higher than one and were thus to be retained. However, as the seventh component had an eigenvalue of 0.984 and added 4,417% to the cumulative percent of variance explained, I decided to retain seven components. These seven components explained 64,45 percent of the total variance. The data were then analysed through a principal factors analysis using a maximum likelihood extraction method (ML) and a varimax rotation.[33] The number of factors to retain was set on 7. The rotated factor matrix resulting from the principal factors analysis can be found in annex 8.

In order to determine which items loaded on factors I selected only the loadings higher than .400. Each of the three items that was designed to represent the variable 'decision control' (BC1-BC3) and the two items representing the variable 'process control' (PC1-PC2) had high loadings on

[33] The data were subjected to both a varimax rotation and an oblimin rotation. I opted for the varimax rotation because these results were more easily interpretable.

the same factor, *i.e.* the first one. As each of the items represented an aspect of control, this was comprehensible. Two of the three items representing the variable 'sentencing' (*i.e.* VN1 and VN2) had high loadings on this same first factor (the third item (VN3) had low loadings on each of the seven factors), which was again understandable as the items on sentencing also concern some sort of control. All four items representing the variable 'neutrality' (NE1-NE4) had high loadings on the same factor, *i.e.* the second one. The variables representing trust, standing and voice were more problematic. The four items representing the variable 'standing' (ST1-ST4) loaded on three different factors; of the three items representing the variable 'trust' one had low loadings on all factors (TR1) and the other two items (TR2 and TR3) had high loadings on different factors. Of the three items representing the variable 'voice', only two factors had high loadings on one of the factors (VC1 and VC3), however not on the same one. Table IV-IX below summarises the above.

Table IV-IX: Result of factor analysis of the first pilot study

Factor						
1	2	3	4	5	6	7
BC 1	NE 1	ST 2	TR 3	ST 1	VC 3	ST 4
BC 2	NE 2	ST 3	VC 1			
BC 3	NE 3					
PC 1	NE 4					
PC 2	TR 2					
VN 1						
VN 2						

In order to clarify the items on standing, trust and voice I conducted a second pilot study on an adapted version of the survey. I did not omit any of the items; instead I chose to add extra items in order to choose which of the items to retain for the ultimate survey.

b. *Second pilot study.*

The second questionnaire consisted of 34 statements. Six statements related to standing, six related to trust, four related to neutrality, six related to voice, three related to process control, five related to decision control and four related to respondents' view on sentencing. Each of the statements was rated on a seven-point scale ranging from 'extremely unimportant' (1) to 'extremely important' (7). One hundred and seven students of the third bachelor criminological sciences at the K.U.Leuven participated in this second pilot study in October 2008.

The data were first explored via a principal components analysis (PCA). The correlation matrix showed that quite some items had low correlations with other items. The KMO value was .651; it is

accepted to perform a factor analysis as long as the KMO value does not drop below 0.50 (Mortelmans and Dehertogh, 2008). The Bartlett test was significant; I therefore decided to conduct a factor analysis. The table 'Total Variance Explained' showed that ten items had eigenvalues higher than 1; together these explained 66,383% of the total variance. The scree plot however suggested that only 5 components should be retained. The data were analysed through a principal factors analysis using a maximum likelihood extraction method (ML) and a varimax rotation. The number of factors to retain was set manually on 5. The rotated factor matrix resulting from the principal factors analysis can be found in annex 8. Results showed that, again, items relating to process control, decision control and sentencing had high loadings on one and the same factor. The same was the case for the items representing neutrality and trust. The items relating to standing and the items relating to voice had high loadings on respectively factor 3 and factor 4. Table IV-X below summarises all this.

One item had cross loadings (VC 2); nine items did not have any loading above .400. In order to decide whether to retain these ten items for the ultimate questionnaire, Cronbach's alphas were calculated. Those items that added to the Cronbach alpha value of one of the factors were retained. For example, two of the three items designed to represent 'process control' did not have high loadings on any of the five factors (*i.e.* PC 2 and PC 3). Cronbach's alpha for the items constituting the first factor (PC 1, BC 1, BC 3, BC 4, BC 5, VN 1, VN2) was .749. Adding PC 2 and PC 3 made Cronbach's alpha mount to .751. I therefore chose to retain PC 2 and PC3 for the definitive survey. In much the same way I decided to retain VC 2, BC 2, ST 4, ST 5 and TR 5. I did not retain statements VC 1, TR 2, NT 3, VN 3 and VN 4. The ultimate survey contained 29 statements. Cronbach's alpha for the scale 'control' (first factor) was .797, Cronbach's alpha for the scale 'neutrality/trust' was .763, Cronbach's alpha for the scale 'standing' (third factor) was .699, and Cronbach's alpha for the scale 'voice' (fourth factor) was .676.

Table IV-X: Result of factor analysis of the second pilot study

Factor				
Control	Neutrality/Trust	Standing	Voice	/
PC 1	NE 1	ST 1	VC 3	VC 1
BC 1	NE 2	ST 2	VC 4	
BC 3	NE 4	ST 3	VC 5	
BC 4	TR 1	ST 6	VC 6	
BC 5	TR 3		TR 4	
VN 1	TR 6			
VN 2				

§3.3.2. Use of the questionnaire

Most interviewees allocated sufficient time for the interview; some however had a subsequent appointment which made us cut off the interview earlier than I would have liked to. In those cases, I did manage to ask all relevant questions, yet the questionnaire was not taken because of these time constraints. In case second interviews were conducted with these people, I did not take the survey either. Some other respondents were not asked to fill in the questionnaire because I felt that their intellectual capacities were insufficient. For these reasons, no surveys were taken from eleven participants to the first wave interviews and five participants to the second wave interviews.

§3.4. Second supplementary source of data: focus groups

The second supplementary source of data consisted of three focus groups. The focus groups were conducted as a follow-up to the individual interviews; the purpose was to check the validity of the results on victim-offender mediation gathered through the individual interviews. Given this purpose, the focus groups were not conducted with victims and offenders but with the mediators of the organisation Suggnomè, the organisation that assisted in the recruitment of participants. Near the end of the data-gathering phase, in May 2011, the empirical results on mediation were presented to these mediators. They were asked to comment on the findings, and in particular focus on whether these were recognisable to them and provided a good representation of reality.

A document listing the main findings on mediation resulting from the individual interviews was prepared in order to structure the focus groups; this document can be found in annex 6 (Dutch original) and 7 (English translation). The participants to the focus groups all received a copy of this document. The discussion centred on four main topics: (1) victims' and offenders' reasons for participating in mediation; (2) the positive aspects of mediation as perceived by victims and offenders; (3) problems concerning the offer of mediation (*i.e.* feelings of being pressured to participate and confusion about the purpose) and (4) a number of concerns relating to the process of mediation (*i.e.* the confidentiality principle and the importance of being validated for the effort by the judge trying the case). The discussion on the topics was each time initiated by asking the mediators to read the results listed for each topic and then reflect on whether these were recognisable to them. This way the debate started. No direct questions were asked except for some questions to reinvigorate the debate when needed, such as: "have the others experienced this too?", "do you all agree with your colleague?", and some questions for clarification.

The focus groups were conducted during the so-called 'denkdagen' of Suggnomè (a yearly reunion of all mediators for two days in a residential setting) in May 2011. As the focus groups took place during this yearly reunion, all but three mediators working for Suggnomè were present. At the

date of the focus groups, twenty-six mediators were working for Suggnomè in a total of fourteen judicial districts (averagely two mediators per judicial district). Twenty-three of them were present for the focus groups. Six Suggnomè staff/secretariat members were present too, so there were twenty-nine participants in total. The first and second group consisted of ten participants; the third group consisted of nine participants. The average length of the sessions was just above one hour (first group: 74 minutes; second group: 54 minutes; third group: 71 minutes). The sessions were audio-recorded by means of a digital audio-recording device and transcribed in a telegram style.

SECTION II. DATA PROCESSING AND DATA ANALYSIS

Introduction

In this section, I will explain how I have processed the data resulting from the interviews (§1), the surveys (§2) and the focus groups (§3).

§1. Analysis of the interviews

§1.1. Data transcription

Data analysis started with the literal transcription of the audio recordings of the interviews. All interviews were audio-recorded by means of a digital audio-recording device (all participants explicitly agreed to this) and transcribed by me personally. The interviews were transcribed verbatim, only omitting interviewer probes (such as "hmm", "uh huh", "ok", "I see") because these were used so often that including them would have continuously broken up respondents' fluent narratives in the transformation from audio to text, and would have complicated reading the transcripts at the stage of analysis. Annotations on respondents' behaviour such as "(sighs)", "(laughs)", "(meant ironically)", "(special intonation)" and "(pauses for reflection)" were made; annotations were also included for inaudible words. The interviews were transcribed entirely. Even those passages that were at first sight not directly relevant to the research questions were transcribed, as I aimed to form a holistic image of people's experiences.

Overall, no major problems occurred during the recording of the interviews. All recordings were of high quality thanks to the use of the latest audio-recording devices and because all interviews were conducted in quiet settings with minimum background noise, which allowed for almost all interviews to be transcribed completely. On two occasions the digital device's memory got full during a conversation; part of these interviews was not recorded (because I noticed that the memory was full only after some minutes) and could thus not be transcribed. In both cases, however, only a few minutes of conversation was lost; this can be concluded from an examination of the topics that were being discussed at the time the device's memory got full and at the time I noticed this and restarted the recording.

§1.2. The use of qualitative data analysis software

The transcripts were entered and stored into the qualitative data analysis software package NVivo (version 8). Several software programmes for qualitative data analysis are available. I chose to use NVivo, first, because of my own prior experience with the programme and, second, because this is the qualitative data analysis software package that is supported by the K.U.Leuven, which implies

that the software is available for a low cost and that trainings are given on NVivo. In order to improve my knowledge of the programme, I participated in one of the trainings on NVivo offered by the K.U.Leuven computer department.

§1.3. Analysis focusing on meaning

Kvale and Brinkmann (2009) discern between analyses focusing on meaning and analyses focusing on language (e.g. discourse analysis and linguistic analysis). The material collected for the sake of this study was analysed with a focus on meaning; the analysis did not focus on linguistic constructions.

Analysis of qualitative data proceeds through a method of coding and categorising (Kvale and Brinkmann, 2009). Coding means that the interview transcripts are broken down into segments of text to which labels (codes) are attached. Text segments which relate to the same topic are coded under the same label. This is necessary in order to structure the large amount of data. This process is followed by organising the list of codes resulting from the above exercise into higher, more abstract codes or categories. The next phase involves actively searching for relations between the categories. These stages of the coding process are called respectively open coding, axial coding and selective coding (Flick, 2006; Mortelmans, 2007; Decorte, 2009).

§1.3.1. Open coding

The first phase of coding, the phase of open coding, is the phase in which the researcher structures the data by breaking the large amounts of text down into themes. Reading through the transcripts, codes are given to text passages. The codes denote the passages' themes; they signify the idea that the respondent expresses in the specific passage. The phase of open coding is also the phase of data reduction, as the researcher labels only those segments of text relevant to the purpose of the specific research project (Mortelmans, 2007; Decorte, 2009).

As I transcribed all interviews personally, I was well acquainted with the material before the actual data analysis started. The actual analysis, then, started with the careful rereading of each of the interview transcripts, attaching labels to fragments of the text that related to the research questions. This means that the fragments coded related to participants' experience with the police, the criminal justice system and mediation, and their opinion on sentencing and punishment. Examples of data that were not coded are people's stories about the offence; this information was not directly relevant to the research questions.

The coding started by coding all text passages in which people talked about the police under the code 'police'. The same was done for the passages in which people talked about the criminal justice system, mediation, and sentencing and punishment. This means that four main codes resulted from

this first step. After this, the data coded under each of these four main codes were broken down into more detailed codes. The codes that were attached to the text passages on these occasions were data-driven (Kvale and Brinkmann, 2009), which means that they were inspired by people's accounts; they were not based on the literature or on the theoretical framework. The words chosen resembled the participants own words as closely as possible. Examples of these codes are: 'the police was late', 'the police did not go after the offender immediately' (both relating to experience with the police), 'the presence of an audience in court' and 'offenders receive more information than victims' (relating to experience with the criminal justice system).

§1.3.2. Axial coding

The next step was to organise all codes into higher categories. The codes listed under 'experience with the police' (1) and 'experience with the criminal justice system' (2) were organised on the basis of procedural justice theory. Basing coding on theory is what Kvale and Brinkmann (2009) call *concept-driven coding*. I used Tyler and Lind's (1992: 141, 159) descriptions of the factors standing, trust and neutrality to create categories, and consequently checked each code to decide whether it could be included in one of these three categories or related to another issue. The category standing according to Tyler and Lind consists of the elements (a) being treated politely and with dignity and (b) respect is shown for one's rights and opinions. Neutrality according to Tyler and Lind involves (a) absence of bias or prejudice, (b) fact-based decision making and (c) honesty. Trust is conceptualised by the authors as (a) concern for needs and (b) consideration of views. These conceptualisations formed the basis for the axial coding phase, yet as the results section will show, additional categories were created and the category 'trust' was eventually removed as the data suggested that additional categories were necessary and others were redundant.

The results on mediation (3) were analysed as follows: through analysis, one finds for example that a number of codes that are listed under 'experience with victim-offender mediation' relate to the characteristics of the mediator or to concerns people have about mediation. All codes relating to one of these overarching topics were put into a category designated by the name of the overarching topic (e.g. 'characteristics of mediators'). The results on moral mandates (4) were analysed in a similar way. An example of an overarching topic is: 'reasons for (not) appealing the judgement'; all codes relating to this were put under this category.

§1.3.3. Selective coding

Selective coding refers to the process of finding relationships between different categories. It is a process difficult to describe, and it does not require actual coding but rather a process of reflection.

An example of a relationship found is that between participation in mediation and the need for speaking in court: victims who participated in mediation were found to have less need to have a chance to have their say in court. This is a relationship between different categories that was found by me as a researcher. These relationships are different from the ones that are indicated by the participants themselves. An example of the latter sort of relationships is that between speaking in court and fear for severe sentences: a number of offenders said that they would not take the floor in court because they feared that doing so would lead to more severe sentences.

§2. Analysis of the surveys

The surveys were analysed in two ways. First, a table was composed listing the mean scores for all items of the total group, of the victim group and of the offender group. This table can be found in annex 9. Second, for each statement I tested whether there was a significant difference between victims and offenders as for the importance they attached to it. In order to do so, independent samples t-tests were conducted on those items that followed a normal distribution, and a Mann-Whitney test was conducted on those items that did not follow a normal distribution. The results of these tests too can be found in the table in annex 9. Do note that no such tests were conducted on the surveys that were filled in during the second wave interviews, because the number of respondents was too small for these tests to have value. When discussing the survey statements below in the next chapters, I will not mention the descriptive statistics explicitly; I refer the reader to annex 9 for details.

§3. Analysis of the focus groups data

The focus group data were transcribed but were not analysed using NVivo. As the report was in an advanced stage at the time of the analysis of the focus group data, focus group results illustrating concrete findings from the interviews were inserted in the report immediately.

SECTION III. QUALITY CRITERIA AND THE ETHICS OF RESEARCH

Introduction

Human science research is guided by a strong concern for research ethics and diverse quality criteria. In this section both are discussed in relation to the current study. Research ethics will be addressed first (§1); next, attention turns to the quality criteria (§2).

§1. Research ethics

The list of characteristics that guides the ethics of research seems well agreed upon. Below I will discuss informed consent, confidentiality, the principle of non-maleficence and the independence of the researcher (e.g. Flick, 2006; Fontana and Frey, 2008; O'Gordon and Vander Laenen, 2009).

Informed and voluntary consent has been described as "[the] idea above all others [that] dominates talk about the ethics of research involving (live) human beings" (Gregory, 2003: 35). The current study did not involve any covert research techniques; respondents were aware at all times that they were participating in a research study. Their consent was sought and obtained for every phase of the study, that is, for each interview and for my presence at the trial. Respondents were furthermore fully informed about the purpose of the study, what was expected from them and how much time and effort participation would take. They were informed by the mediator asking if they were interested in participating in the study, by me on the telephone when contacting them for the first time and at the start of the interviews. As to the principle of voluntariness, potential participants were free to decide whether to participate in the study. Respondents did not receive monetary compensation for their participation.

The study did not raise special issues of *confidentiality*. The respondents were guaranteed anonymity, but none of the participants specifically discussed issues of anonymity or attached special meaning to it. The interview tapes did not mention the participants' names, nor are participants' names mentioned in the report. As to privacy, I may mention that the interviewees were free to choose the interview location; therefore it is safe to say that when interviews were conducted at participants' homes, no major intrusions upon privacy were experienced.

The principle of *non-maleficence* holds that researchers should be aware of the negative consequences, if any, of participation in the study for the participants. The study held no danger for the physical integrity of the participants. As the participants were asked to talk about a difficult experience, I had anticipated that on an emotional level, the interviews could be painful for the participants. However, all participants freely consented to participation, moreover, only two people showed signs of stress or intense emotions during the interviews. Many respondents expressed

positive feelings about having participated in the study, saying that participation had helped their coping and recovery process, or had provided them with information they had not yet received.

As for the *independence of the researcher*, it is important to know that the study was not commissioned by a government or organisation; it was financed by the K.U.Leuven. The results therefore do not suffer from any bias; I was fully independent of any interest groups.

§2. Quality criteria

It is sometimes said that qualitative researchers lack definite quality criteria to guide their research and evaluate its worth. Even if one discounts the hyperbole present in such accounts, it remains true that qualitative researchers today have no leading quality criteria in the way quantitative researchers have. The discussion that should lead to such definite criteria marks the handbooks on qualitative research of the last decade. If there is one thing all authors of these books seem to agree upon, it is that the traditional quantitatively inspired criteria of validity and reliability are not as relevant or at least not as readily applicable to qualitative research as they are to quantitative studies. Qualitative researchers, then, have developed alternative interpretations of the traditional criteria. I will discuss these criteria with a view to the current study.

§2.1. Validity

According to Bryman (2008), the only traditional quality criterion that can be applied to qualitative studies is *ecological validity*, that is, the extent to which findings are applicable to people's everyday social settings. The ecological validity of research findings may be problematic when the research setting differs from everyday settings in important respects, which is the case in for example experimental or laboratory settings. As the participants to this study were people experiencing a real-life encounter with the criminal justice system, the ecological validity of the current study is high.

External validity refers to "the generalizability of a research finding (…) to other populations, settings, treatment arrangements, and measurement arrangements" (Kidder, 1981: 446). It concerns the degree to which the results obtained in the study sample can be applied to the population and the degree to which these can be applied to other situations, other conditions and other groups (Mortelmans, 2007). The external validity of the current study is limited for a number of reasons.

First, methodological choices limit the generalisability of the findings. Only those victims and offenders interested in participating in mediation were selected, which implies that the results of the study are only applicable to people who are open to mediation. They cannot be generalised to victims and offenders with another attitude towards mediation, that is, to people who are not interested in mediation. This is an extremely important remark. This restraint is a consequence of the voluntary

nature of participation in victim-offender mediation and marks many studies on the programme (Umbreit *et al.*, 2004). It is neither possible to generalise the findings on those who did not participate in mediation to those people who never were offered mediation, as Strang's (2002) research shows that victims who were promised a conference but never received one were more dissatisfied with the way their cases had been treated than those who were never promised a conference at all. On the other hand, one could hypothesise that those victims who have had an initial contact with a mediator have experienced some kind of acknowledgement even if in the end no mediation or conference takes place. All this is to show that the findings of the current study cannot be generalised to the general population of victims and offenders.

Second, a self-selection bias marks this study, as possible participants freely chose whether to participate in the study. It is not clear whether those who refused to take part in the study differ from those who agreed to take part, but it is possible that those who agreed to participate in the study are exactly those victims and offenders who had good experiences with the mediator and agreed to participate out of gratefulness towards the mediator who asked for their participation.

A third threat to the external validity of the current study is the fact that the study included a pre-test, in that respondents had already been talking and reflecting about their expectations of the trial and/or mediation before attending the trial and/or participating in mediation (the 'experimental variables'). As Powell (2004) points out, such pre-tests increase subjects' responsiveness and sensitivity towards the experimental variable. One should consider that the current study's subjects had been invited to reflect about their expectations of the trial and about punishment before actually attending the trial. As several respondents indicated, the interview led them to reflect more intensely about these subjects than they would have done otherwise. This prohibits generalisation of the results to those members of the population that were not pre-tested.

Internal validity refers to "the conclusiveness with which the effects of the independent variable are established in a scientific investigation, as opposed to the possibility that some confounding variables may have caused the observed results" (Kidder, 1981: 447). The greatest threat to internal validity in interview studies is that the subjects may be influenced by the researcher, as qualitative interviewing unlike quantitative surveys which do not require the researcher and the research subjects to meet presupposes close involvement and the establishment of a personal relationship (Bryman, 2008). Different from quantitative studies, qualitative studies do not allow eliminating the researcher's influence on the research subjects (Flick, 2006). Participation in a qualitative study, then, may lead to behavioural and attitudinal changes in the subjects which were aroused by the researcher but may be falsely attributed to the independent variables (Bryman, 2008).

It is hard to detect whether this reactive effect may have taken place with the respondents to the current study. Respondents as said were asked explicitly, at the end of the second interview, if they thought their attitudes on the subjects discussed during the interviews had changed as a result of participation in the study, and whether they felt that they had been influenced by me as an interviewer. They generally indicated that this had not been the case; the main effect of participating in the study had been that they had given certain topics more thought than they would have done otherwise, and that they had a better understanding now of their own thoughts and attitudes. They generally reported that those attitudes in se had however not changed, though there was one respondent who said that, because of his participation in the study and the questions on whether he believed he had been sufficiently involved in the trial, he had started to believe indeed that more opportunities for victims to actively participate in the criminal proceedings are desirable. He had not felt like this on the outset. Another effect of participation in the study showed in a participant who initially did not plan to attend the trial but after the first interview changed her mind. I stressed that she should not attend the trial only because that was better for the study, yet she said that this was not the reason for her changing her mind; she had just become more curious.

A second threat to the internal validity of the current study results from the method of participant selection, and is similar to one of the threats described above with respect to external validity. I do not know if the possible participants that refused to take part in the study differ from those who did take part. The mediators who functioned as gatekeepers reported that the most important reason for potential participants to refuse participation in the study were time constraints. Yet one could hypothesise that those people who agreed to participate are for example more socially engaged, more eloquent or less stressed about the offence than those who did not.

Let us then look at the validity of the questionnaire. In an overview of the main causes of measurement errors in questionnaires, Foddy (1993) point outs that respondents frequently misunderstand questions. Even factual questions asking for respondents' age or asking if, for example, they have a driving licence or own a car, are sometimes answered incorrectly. More complex questions such as those used in the current study therefore run a high risk of being misinterpreted, which is problematic with a view to data validity. Throughout conducting the study, I noticed that at least half of the respondents required additional explanation on the statements. They either did not understand the statement or did not understand certain words used in the statements. With hindsight I must admit that this may certainly be due to the statements being formulated in a too complicated way (as a colleague once remarked), but even common words such as 'vonnis' (verdict) were sometimes not understood. This according to Foddy (1993) is anything but exceptional, but the problem remains. Also, I do not know to which extent the respondents who did

not ask for additional explanation truly understood the questions or did not ask for explanation out of fear for looking dumb or because of disinterest and an eager to 'get over with it'.

Finally, the internal validity of the current study's results was advanced by the focus groups. It is a common technique in qualitative research to ask people in the field one is studying for feedback on the results. This was done in the current study too; the results on mediation were presented to almost all mediators conducting mediation in Flanders during the focus groups. The focus groups were very useful in order to check the degree to which the empirical observations reflect daily practice.

§2.2. Reliability and replicability

In quantitative research, reliability refers to two things: it refers to "the extent to which an experiment, test, or any measuring procedure yields the same results on repeated trials" (Carmines and Zeller, 1979: 11) and to the degree to which different people analysing and interpreting the same data come to similar results and conclusions (interrater reliability, Cambré and Waege, 2003).

The first understanding of reliability refers to the absence of measurement errors. Yet as Carmines and Zeller (1979) and Boeije (2005) point out, measurement errors cannot be avoided and repeated measurements will consequently never lead to the exact same results; reliability therefore is not so much about the exact replication of results but about the *consistency* of the results produced by multiple measurements. The reliability of research studies depends much on the adequacy with which the researcher reports on the distinct steps of the research study and thus allows readers to assess and replicate each one of these steps (Mortelmans, 2007). The replicability of this study is advanced by the recording and verbatim transcription of the interviews and the fact that the interview guides, the questionnaire and the guide to the focus groups have been included in the annexes.

The second understanding of reliability relates to what is called interrater reliability. With a view to test whether it had been justified to use the procedural justice framework to analyse the data, and find out whether using this framework had hindered me as a researcher to be receptive to new categories emerging from the data, four other researchers were asked to check the analysis of the data. One researcher from the Netherlands Institute for the Study of Crime and Law Enforcement (NSCR), highly acquainted with procedural justice theory, and three colleagues of the Leuven Institute of Criminology unfamiliar with procedural justice theory analysed the data obtained throughout the first interviews on evaluations of the police encounter and the criminal justice system.

The first researcher at the time conducted a study on procedural justice herself and was thus thoroughly acquainted with the theory. This person was asked to conduct the axial coding step in the same way as I did. She was asked to organise all the codes into the categories standing, trust and neutrality, as I did myself, and to create extra categories if needed or eliminate redundant ones.

Afterwards we checked whether we had included all codes in the same categories and discussed those that we had put in different categories. Most codes had been coded in the same category; differences in opinion were discussed and contributed to the quality of the coding process. This researcher was also asked to read through the chapter on mediation and give her opinion on which elements of procedural justice the positive and negative aspects of participation in mediation related to. Our analyses of this issue too were highly similar.

Two of the three other colleagues were presented with the uncategorised list of codes and asked to create categories themselves. They were not familiar with procedural justice theory. The goal was to find out whether these people would also come to categories of standing, neutrality and performance. It showed that the categories that these colleagues created indeed were very similar. One had distinguished between categories of (1) treatment, (2) information provision, (3) satisfaction about police interventions and (4) neutrality. The second colleague created three main categories: (1) negative experiences, (2) positive experiences, and (3) a general category. Within each of these categories she discerned subcategories, which related to (a) (un)respectful treatment (e.g. codes like "They made fun of me", "They behaved arrogantly"), (b) (un)fair treatment (e.g. "Discrimination on the basis of age", "Did not listen to my story"), (c) (in)correct procedures (e.g. "I was not allowed to call anyone", "No chance to read the file"), (d) unequal treatment (e.g. "My accomplices were allowed to go home, I was not") and (e) police performance (e.g. "They arrived at the crime scene quite late"). For victims specifically, there was a category relating to practical help and emotional support. One can observe that coming to the fore were indeed elements relating to standing ((un)fair and (un)respectful treatment, emotional and practical support, also: the application of procedures relating to respect for rights), to neutrality (unequal treatment) and to performance.

Finally a third colleague, unaware of procedural justice theory too, was asked to read through the fragments coded under one and the same label and asked to check whether the label covered the contents well. In conclusion, I dare say that the interrater reliability of the current study is high, and that the choice to base the axial coding on procedural justice theory's pre-established categories was justified. Note that the same exercise was not repeated for the data obtained throughout the second interviews because I could build on the discussions that I had had with the colleagues when checking the axial coding work for the first interviews.

Part III. RESULTS OF THE EMPIRICAL STUDY

The third part of this dissertation is devoted entirely to the description and discussion of the results that emerged from the study. This part is structured according to the research questions. Chapter five and six deal with the determinants of perceptions of fairness pre-and post-trial respectively and as such will allow providing an answer to the first and second research question. Chapter seven sets out to investigate whether the victims and offenders who participated in this study held moral mandates about the outcome of the trial. These results will allow answering the third research question. Chapter eight is focused on the findings on whether and how participation in a restorative intervention may influence fairness judgements, which will lead to an answer to the fourth research question. In these four chapters, the results are described and discussed in light of the literature and the state of the art; the answers to the research questions are formulated in the final chapter (chapter nine, the general conclusion).

Chapter V. PERCEPTIONS OF FAIRNESS AND JUSTICE IN CRIMINAL TRIALS: THE PRE-TRIAL PHASE

In this chapter, I provide a description of the criteria used by the study participants to assess the fairness of the investigatory phase of the criminal proceedings, that is, the pre-trial period. The specific aim of this chapter is, first, to make the concepts that procedural justice literature has advanced as the ones determining people's fairness judgements (*i.e.* the concepts of standing, trust and neutrality) more concrete, as explained above. The second aim of this chapter is to detect if any elements of people's experiences influencing their fairness judgements have been overlooked by procedural justice literature. The third aim of the chapter is to reflect on the theoretical models that were described in the second and third chapter, departing from the findings of the current study.

As explained in the methodology section, all elements that were mentioned by victims and offenders when talking about their experience with the police or criminal authorities during the interviews were coded in a first phase called open coding. Next, I considered, for each of these codes, whether the fragments coded related to standing, trust, neutrality or something else (axial coding). Like this, a tree of codes originated. Below I will describe, based on this tree, which elements exactly were included under the banners standing, trust, and neutrality, and which other elements influencing people's evaluations about the police and the prosecution were detected throughout the analysis of the interviews. In the first section, I will deal with the cues that determined participants' evaluations about the police, as the police are the first authorities that victims and offenders encounter. In the second section, the cues that drove participants' evaluations on the public prosecutor and investigating judges[34] will be presented. After describing the results on one of the cues, I will discuss them on the basis of the theoretical framework of this dissertation.

The findings will be illustrated with quotes from the interviews. Before starting the analysis a short word on the quotes is in order. In order to make the quotes more readable – as these were transcribed verbatim – I took Poland's (2003) advice and edited quotes minimally where necessary in the interest of readability. In order to protect the privacy of respondents and other people named by the respondents, respondents' names were substituted with an X. Names of other people the participants referred to are designated by a Y and followed by a short identification of this other person (e.g. husband, son). Mediators' names were substituted by the words "(de bemiddelaar)" (the mediator) and names of cities were substituted by the word "(stad)" (city). Interviewer questions start

[34] The investigating judge (onderzoeksrechter/juge d'instruction) is the judge that is appointed to conduct the criminal investigations in case measures need to be taken that intrude upon individual rights and freedom, such as preliminary custody, DNA tests or house searches (Van den Wyngaert, 2003).

with the letter "V" after the Flemish word for 'question' ('vraag'). The quotes are accompanied by an identification of the participant by sex, offence, and whether or not they participated in mediation for redress. Participation may have been face-to-face or indirectly, and participation does not necessarily imply that a written agreement was reached between the parties. More information on the specifics of each participant's participation in mediation can be found in annex 1. One last remark on the quotes is that these were not translated to English. I chose not to translate the quotes because it proved extremely difficult to convey the exact meaning of what respondents said in a translated quote. I am aware that to non-Dutch speaking readers this is inconvenient, but I wanted to prevent misinterpretations of quotes. I am confident that the report was written in such a way that non-Dutch speaking readers too, despite the fact that they cannot understand the quotes, will without difficulty be able to follow the lines of reasoning that are developed.

During the discussion of the findings, the reader will notice that I will regularly speak about one factor influencing another. Some may question this approach, as it is generally not accepted to make statements about causal relations on the basis of qualitative data. Yet this view has been questioned the last decade; many have started to explore ways to identify causal relationships on the basis of qualitative data (see e.g. Miles and Huberman, 1994; Maxwell, 2004; Tacq, 2011). I should make clear that I do not have the ambition of identifying causal relationships, as this implies ruling out alternative explanations as well as obtaining certainty about a consequence Y always and necessarily following from the presence of a presumed cause X and about the presumed cause X being sufficient to cause a consequence Y (Boje, 2001). This I believe is not possible on the basis of the data gathered for the sake of the current study. Yet I do believe that the data, rich and in-depth as they are and being obtained through a longitudinal design allowing to observe people involved in a process while that process is developing, allows me to point at influences. Saying that X influences Y, which is what I will do, however, does not imply that X necessarily causes Y or that the presence of X is sufficient in order to cause Y. The reason I point at influences that I believe are present is because a main goal of the current study is to provide an in-depth understanding of the meaning of fairness in order to breathe new life into procedural justice research. The detailed nature of the data allows providing some hypotheses that have not been put forward before because of the quantitative nature of most studies on procedural fairness.

SECTION I. THE PHASE OF THE POLICE INVESTIGATION

Introduction

The analysis of the interviews led me to identify three main determinants of perceptions of procedural justice in the police investigation phase. These were perceptions of standing, of neutrality, and of police performance. The results on each of these three determinants will be illustrated below and will each time immediately be followed by a discussion. I will consecutively deal with perceptions of standing (§1), perceptions of neutrality (§2) and perceptions of police performance (§3). I did not retain a trust category, the reason for which will be thoroughly explained.

§1. Standing

The two defining elements of standing according to those who introduced the concept (Tyler and Lind, 1992: 141) are "being treated politely and with dignity" and "respect is shown for one's rights and opinions". I distinguished three elements within the factor 'standing': (1) dignity, politeness (as distinguished by Tyler and Lind, 1992), (2) respect for rights (as distinguished by Tyler and Lind, 1992), and (3) concern for needs. The latter element according to Tyler and Lind (1992: 159) belongs to the category 'trust'. Yet throughout the coding process I of my own accord created a category 'support' under 'standing', realising in a next step that this category equalled the 'concern for needs' category that I had created under 'trust' based upon Tyler and Lind (1992). I eventually decided to include all interview fragments relating to 'concern for needs', as well as all those relating to 'consideration of views', the second of Tyler and Lind's (1992) two elements of 'trust', under 'standing'. I did not retain a 'trust' category. The reason for this is that according to the results of the current study, a feeling of trust, contrary to people's feelings of neutrality and standing, which are based upon subjective perceptions of other people's actions, is formed on the basis of their perceptions of neutrality and standing, not on the basis of their perceptions of concrete actions of other people. I believe first feelings of standing are generated when people realise the authorities heed their needs or consider their views, and only next a feeling of trust arises. Let me explain.

I believe that the confusion about the status of the factor 'trust' living among those studying procedural justice may be caused by the fact that trust is regarded at the same time as an independent variable (a co-determinant of perceptions of procedural justice) and as a dependent variable (people's level of trust in authorities is determined by their perceptions of procedural justice). Building on the data gathered for this study, it seems that trust is not an independent but rather a dependent variable. Both of Tyler and Lind's elements of 'trust' (*i.e.* consideration of views and concern for needs) have

been included under 'standing'. The reason why 'concern for needs' was included under standing was delineated above; 'consideration of views' was included in the category 'concern for needs' as 'need for participation' because participation is often described as a need in the literature. Wemmers (1996) too perceived of participation as an element of standing, thus backing up this choice.

§1.1. Dignity, politeness

§1.1.1. Description of results

Dignity and politeness intuitively are associated with police officers' attitude towards litigants. This shows clearly in the interviews, yet other aspects too influenced participants' judgements on whether they had been treated with dignity and politeness. One element, mentioned by one victim and two offenders, concerns **whether one received food and drinks during the police interrogation** or, for offenders specifically, while one was held in preliminary custody at the police station.

"En dan hebben ze mij meegenomen en hebben ze een ondervraging gedaan. Met hen heb ik geen problemen gehad, ik heb drinken gekregen, ik heb eten gekregen ook die avond, want ik had dus niet gegeten, ze zijn voor mij friet gaan halen." (Male offender, sexual abuse (respondent 53), participant)

An event that has great influence on offenders' feelings of dignity is **whether they were handcuffed** upon arrest or during transportation from the police station to the prosecutor's office. Seven offenders mentioned this issue, two of which in reply to the question which of the events of their experience had been the most impressive. Some explained *why* they found it problematic; a factor that plays a role is that being handcuffed reduces a person's identity to that of 'a criminal'. One's multidimensional identity of being a father, a colleague, etcetera is reduced to a one-dimensional one.

"R1: *(vrouw van respondent)* (…) wordt hij precies gewoon in een vakje geduwd, hij had zo'n gevoel van seg, nu ben ik een gangster, ik heb in den bak gezeten, allez, zoiets van, ja.
R2: Met die handboeien aan… Dan denk je wel…" (Male offender, violent theft and threat of arson (respondent 24), non-participant)

One participant said the problem with being handcuffed was that the police officers by all means wanted to handcuff him in the presence of his children; they refused to consent to his proposal to handcuff him outside the house. The same participant associated being handcuffed with a young generation of police officers and with reluctance to solve the situation in a serene way.

"Die oudere generatie zal proberen van mondeling een oplossing te zoeken en te kalmeren, en dan te vragen of je mee wil naar het bureau (…). Dat doet die jongere generatie niet he. Dat is direct handboeien aan – allez, als het lukt." (Male offender, intentional assault and battery (respondent 31), participant)

Related to the issue of being handcuffed is offenders' feeling of being treated in a manner that does not at all match their image of the self. Seven of them – mainly people who were accused of relatively minor offences that happened accidently or unwillingly – expressed that they had been treated "**as if they were a big criminal**", whereas they had a clean criminal record and perceived themselves as law-abiding citizens who just made one little mistake. Some explained that they felt that their one-time encounter with the police had left **a stamp of 'criminal'** on them.

"Je bent nooit of nooit in contact gekomen met politie of met iets daaromtrent, en in één keer word je daarin gesmeten door zo'n stomme verklaring en dan ben je ineens een misdadiger." (Male offender, intentional assault and battery (respondent 26), participant)

When asked to describe **the attitude of the police officers** they had encountered, most victims reported positive attitudes, ascribing to the officers positive characteristics such as friendliness, politeness, fairness, understanding, compassion and sympathy and being concerned about the victim. Understanding and empathy especially were important to the victims. Some victims said that they could not imagine the police not being polite to them: it is their duty.

"Ik ga er wel van uit dat mensen bij de politie daarvoor opgeleid worden. (…) Ik kan me niet voorstellen dat men niet als eerste gaat zorgen voor de slachtoffers, ze iets te drinken aanbieden en hen op hun gemak stellen." (Female victim of intentional assault and battery (respondent 1), non-participant)

"Ik ben goed behandeld door de politie en dat doet al veel. Tegen als je daar zo in een hoekje wordt geduwd of dat ze brutaal zouden zijn." (Male victim of intentional assault and battery (respondent 12), non-participant)

Yet there was also a victim who felt that the police did not show any sense of understanding for her problems, which had the far-reaching result that she felt that the police officers treated her as if she was the offender. Only two other victims were negative about the police intervention. One of them described how a police officer had laughed in her face and treated her arrogantly. She also reported police officers behaving scornful and condescendingly, judging her lifestyle and her parenting style.

"(…) met die persoon had ik echt het gevoel dat het niet klikte. En die had zijn mening al gemaakt en die deed uit de hoogte." (Mother of male victim of intentional assault and battery (respondent 30), participant)

Offenders were much more negative about police officers than victims. About half of them said the police officers had been friendly and polite, understanding and calm; the other half described them as arrogant, pompous, provocative and immature, as people who made fun of them and insulted them.

"Of zo een persoon die je nog nooit gezien hebt die voor u komt staan zijn boterham te eten zo *(doet man na die met open mond kauwt en zegt dan in zwaar dialect)* 'wat denkte na'? Ik weet niet, ik vind, je bent een volwassen mens, het is kinderlijk om zo iemand staan uit te dagen. Dat is dan een volwassen mens die voor u staat he. Dat hou je niet voor mogelijk." (Male offender, intentional assault and battery (respondent 54), non-participant)

Four offenders reported **physical violence**. A number of these offenders did mention that they understood *why* the police officers had treated them harshly. They said that as police officers often do not know who they are dealing with, it is somehow normal for them to be hard-handed. Four offenders reported that they had been **bullied** by police officers. One young offender for example explained that they had deprived him of his glasses after he had said that he cannot see without them. Six offenders had received **threats** from the police in order to pry a confession out of them. Police officers had for example been bragging about how many years in prison they risked.

"Zoals mij echt in die cel stampen dat ik bijna met mijn gezicht tegen dat bed vlieg. Dat hoeft niet echt denk ik." (Male offender, violent robbery (respondent 48), participant)

"Hij heeft verteld dat de politie eigenlijk insinueerde dat als hij niet zei dat hij erbij betrokken was, dat hij nog een aantal dagen zou moeten blijven. En ik kan me voorstellen wat voor impact dat op een kind heeft." ((Mother of) male offender, theft (respondent 39), non-participant)

Four offenders reported that they were **emotionally upset after the police interrogation** because the police officers had been rude to them, had pressured them to confess crimes they did not commit or because they had been held in the police station for hours on end. Because of being so upset, one respondent signed his evidentiary statement without reading it; the effect of being treated in an angry manner was such that it prevented him from going back to the police station to set right the statement. Another participant indicated that the treatment he received from the police officers had made him lose his self-confidence, neglect his job, go to bed early, etcetera. He reported that the treatment he had received from the police officers to him had felt like a punishment.

"Ja, hoe de mensen tegenover u hebben gestaan, dat is al op zich een straf. (…) Daar kun je echt iemand mee onder krijgen, op korte tijd. Dat is echt, ja, dat is het gevoel van onmacht, het gevoel van sterkte, je bent niemand he." (Male offender, intentional assault and battery (respondent 54), non-participant)

Markedly, two offenders did not believe that the police officers treating them in a friendly manner were genuinely friendly – they thought it was just a sham.

"Ja want die ene politieman zei zelf – bah, ook weer schoonklapperij natuurlijk – *(op lieflijke toontje)* ja, hoe zou je zelf reageren in zo'n situatie zegt hij, je bent dan al helemaal van slag en als ze dan zo doen, ja, dat is eigenlijk wel ergens een normale reactie dat je zo reageert." (Male offender, intentional assault and battery (respondent 34), participant)

"De ene is keivriendelijk tegen je maar je weet toch ook dat hij aan het liegen is, dat is toch belachelijk." (Male offender, burglary and theft (respondent 41), participant)

Notwithstanding these negative sounds, many respondents explicitly said that one **should not lump all police officers together**. They acknowledged that a bad experience with one police officer does not imply that they regard all police officers as unfriendly and impolite. Also, even those participants with a negative opinion about police officers and their work stressed that the police is a necessary institution, though one victim unenthusiastically called the police a "necessary evil".

"Ik ga niet zeggen dat dat allemaal slechte mensen zijn. Die mensen zijn er om hun werk te doen en er zullen er zeker heel veel zijn die heel veel goede dingen doen, maar uiteindelijk zijn het maar mensen en iedereen maakt fouten." (Male offender, intentional assault and battery (respondent 8), non-participant)

Some participants said that the police are entitled to be harsher on some people than on others. One victim stated that police officers are entitled to be harsher on offenders than on victims. Other participants, both victims and offenders, disagreed. Another participant thought that the degree to which police officers should show respect for citizens depends on their function: those who need to resolve a crime are allowed to behave less forthcoming than a local police officer whose task is to be available to the local community. Two others declared that those who have committed more severe crimes should not be treated with as much respect as those who committed minor crimes. Furthermore, participants agreed that people who behave impolite towards police officers should not be surprised if they are not treated with as much respect as those who behave decently.

"(…) ik vind dat ook een verplichting, dat ze ondanks het feit dat dat de dader is, dat ze die niet hardhandiger aanpakken dan mij." (Female victim of intentional assault and battery (respondent 1), non-participant)

"Ze moeten geen onderscheid – of het moet echt een pedofiel zijn of zo, die mogen ze van mij harder aanpakken. Ja, dat is nogal een verschil." (Male offender, robbery (respondent 27), non-participant)

Three participants (one victim, two offenders) felt that their dignity was violated by the fact that **the police clearly distrusted them**. The offenders for example were perplexed that the police thought that they would flee if they would allow them to take their own car to drive to the police station.

"Handboeien aan, vervoer niet met uw eigen auto, je moest eens gaan lopen…" (Male offender, intentional assault and battery (respondent 54), non-participant)

This relates to one last aspect of standing, which is that **when police officers behave properly towards citizens, these citizens in turn will behave forthcoming towards police officers**. Both victims and offenders, ten in total, said that the way they behave towards police officers depends to a great extent on how the police officers behave. Yet the opposite is also true: participants acknowledged that if the police behave badly, that is often due to the person they are dealing with.

"Ik heb daar toch de gelegenheid gekregen met die mensen om daar toch wel wat losser mee om te gaan als over het algemeen. (…) Ook omdat, ik heb geen weerstand geboden, ik ben niet agressief geweest, dat heeft daar ook allemaal mee te maken denk ik." (Male offender, intentional assault and battery (respondent 54), non-participant)

What are **the effects of (not) being treated with respect**? One of the victims said that the fact that she had felt acknowledged by the police had made her peaceful and calm. She did not have to fight for **acknowledgement**; she did not have to spend time proving that she had been a victim and that she merited attention. This made her feel at ease and more capable of letting go of the offence, and raised her confidence not only in the police but also in the judicial authorities who would try the case.

"Ik had absoluut niet de neiging om te zeggen 'ik ben hier slachtoffer', ik heb ook op geen enkel moment het gevoel gehad dat ik moest gaan bewijzen dat ik slachtoffer was, of moest uitleggen hoe erg het was omdat iemand dat in vraag trok of zo. En ik heb daar veel over nagedacht over hoe komt dat nu eigenlijk, en ik denk dat dat veel te maken heeft met wat ervoor gebeurd is. Hoe meer je het gevoel hebt dat je erkend wordt en dat mensen je au sérieux nemen, hoe minder je zelf de neiging hebt om daarvoor te gaan strijden en te gaan vechten. (…) Het feit dat je voelt dat je erkend wordt. Dat maakt dat je zelf ook minder de neiging hebt om daar zelf heel hard achteraan te gaan. Dat je minder de neiging hebt om continu te moeten zeggen van (ik ben slachtoffer van…'. Je bent een stukje geruster. Je kunt beter loslaten en hebt meer vertrouwen in degenen die ermee bezig zijn. Ook naar de rechtszaak toe bijvoorbeeld." (Female victim of robbery (respondent 47), participant)

Victims seem to make a difference between acknowledgement of the offence and acknowledgement of their status as a victim. Four victims complained that the police did not *take the offence serious*. A victim of stalking explained how the police practically laugh at her when she reports new facts of

stalking. Another indicator of whether or not the police take the case serious is whether they put much effort in trying to find the offender. Several victims of offenders who were known to them reported how stunned they were that the police did not arrest the offender immediately after they reported the offence, even if the offender's identity was clear. One victim explicitly associated this with 'not taking the case seriously'. Another participant explained that she had called the police to report the offence and when she had not arrived at the police station an hour later, the police had called her to ask what was keeping her. To her, this was an indication that they took the facts serious. Yet another participant stated that the police only started taking her story serious after they had been threatened by the offender themselves.

"Op den duur is dat ook zo van, ze lachen met u he, als ik kom klacht neerleggen gewoon omdat hij mij 104 keer belt op 75 minuten, is dat zo van, ja ok." (Female victim of stalking (respondent 18), non-participant)

A second aspect of acknowledgement of victim status is *acknowledgement of the victim as victim*. Two victims reported how they had never considered themselves 'a victim' until the police made them realise that they were. Victims furthermore attach great importance to the police believing their story. One victim upon reporting an offence was asked explicitly by the police "whether she was aware that she could be sued for falsely reporting offences to the police", and a couple that had been burgled described how they went to the police station to recover their belongings but could not recover things that the thieves said were theirs. All three victims were upset by these reactions.

"Ze hebben mij ook in alles voort geholpen en gezegd van hier moet dat stoppen en jij moet nu hulp gaan zoeken voor u en voor uw kinderen. En vroeger liet ik dat allemaal gebeuren. Ze hebben mij echt de ogen geopend." (Female victim of rape (respondent 38), participant)

"(…) de politie is dan gekomen, en dan doe je die deur open, en het eerste wat die zeggen is: 'ja mevrouw, ben je wel zeker van wat je nu weer wil verklaren?' (…) 'Je weet toch dat als je dingen verklaart, als dat niet de waarheid is, dat ze u daar ook voor kunnen vervolgen?'" (Female victim of stalking (respondent 18), non-participant)

Another aspect of acknowledgement of victim status concerns what is known as 'blaming the victim': six participants talked about whether the police had blamed them for the offence. Being held responsible for the offence had made one participant so angry that she did not officially report the offence after she had telephoned the police and had been told that it had been her own fault (for the sake of clarity: this concerned another experience than the one that had led to the interview).

"Ik bel naar de politie (…) en die zeggen 'jamaar mevrouw, dat weet je toch dat je geen geld wisselt op straat, dat je dat niet doet'. 'Dat weet je nu toch'. Ik was eigenlijk nog kwader (…). Ik voelde me zo breed *(toont met haar vingers)*. Ik ben het niet gaan aangeven." (Female victim of burglary and theft (respondent 52), non-participant)

The acknowledgement of victim status also relates to the police's attitude towards victims who repeatedly report offences. A couple that is frequently bullied by its neighbour reported how the police get annoyed with them. A victim of stalking too said that the police seemed to think that she was having pleasure in calling them so often, and one person said that the police gave her the feeling that "she was calling them every day on purpose". Interestingly, in this respect, one victim said that police officers are not responsible for victims' healing but do have to consider victims' well-being.

"Ik weet dat zij er niet verantwoordelijk voor zijn hoe ik dat verwerk, maar ze hebben wel verantwoordelijkheid naar mijn welzijn. (…) En als je dan ook nog onvriendelijk behandeld wordt, dan denk ik dat je je helemaal slachtoffer voelt." (Female victim of robbery (respondent 47), participant)

A negative consequence of not being treated with respect is that one is less inclined to report new offences and that trust in the authorities is affected, one victim said. Another victim mentioned a relationship between how one is treated and willingness to tell one's story into detail; she said that she could imagine that if the police behave unfriendly, a victim would decide to get the interrogation over with as soon as possible and consequently not tell the complete story, which is an important observation with a view to fact-finding.

"(…) doordat ze u wel correct maar toch ook persoonlijk behandelen heb je wel de neiging van je volledige verhaal te doen, hoe moeilijk dat ook is. Terwijl ik denk dat als daar zo'n vieze voor uw neus zit, dat je dan maar de helft… Ik denk dat je dan zoiets hebt van laat maar." (Mother of female victim of sexual abuse (respondent 50), participant)

§1.1.2. Discussion

Concretisation of the requirement 'being treated politely and with respect for dignity'

Throughout the above description, the procedural justice aspect of 'being treated politely and with respect for dignity' was made more concrete. A number of elements that have never previously appeared in procedural justice literature came to the fore, such as the importance of receiving food and drinks during the interrogation or while held in a police cell, the significance of being handcuffed and the issue of the police putting trust in the citizens they encounter. These aspects of being treated politely and with dignity have to my knowledge not been included in surveys measuring experiences of procedural justice. The results, then, suggest some elements to take into account when setting up

future (quantitative) research measuring the extent to which victims and offenders feel their dignity is respected in interactions with the police. Looking closer, these elements in fact seem to relate to respect for dignity rather than to being treated politely. Whereas the quality of the interpersonal relationship between the police and citizens often is conceptualised as 'have they treated citizens in a polite manner?', the current study suggests that the category is broader: it includes a broad range of other issues that communicate about the degree to which people's dignity is respected.

A moral mandate on procedure – the conditionality of standing

An important finding of the current study is that the degree to which the police should fulfil its obligation of acting politely and with respect (participants as said perceived this as an obligation), at least in the opinion of some respondents, (should) depend(s) on (a) whether they deal with a victim or an offender, (b) whether they deal with an innocent or guilty person, (c) whether the offender they deal with has committed a serious or a minor crime, (d) the attitude of the victim or offender they deal with and (e) the police officer's function. Receiving respect in other words seems to be conditional. This is something that has been touched upon by Heuer *et al.* (1999) too; these authors too found that people consider disrespectful treatment by an authority figure more fair than respectful treatment when someone showed negative behaviour toward the authority figure itself. Yet the finding of the current study is broader; it points to more factors that determine whether someone is worthy of being treated with respect for dignity than Heuer *et al.* did. Further indications of this conditionality of standing are found in a Dutch handbook on the way the police should treat victims of crime (Aertsen *et al.*, 2002). The book includes a reference to research that found police officers admitting that they only give certain kinds of victims special attention, or only under certain conditions. An example of such a condition is that the victim is a child or cooperates well. The authors call this "voorwaardelijke slachtofferbejegening" ('conditional aid to victims') (p. 198).

This finding leads to several new theoretical interpretations. For example, several participants said that when offenders defy the police, they should not complain that they are treated in a severe manner. What these people say is that sometimes people have themselves to blame for the fact that the police treat them unkindly. This reminds of just world theory (Lerner, 1980), a theory that describes people's need to believe that the world is a fair place where everybody gets what (s)he deserves. The theory states that people assume that when bad things happen to people, they have themselves to blame. The results of the current study show a very much related way of thinking: when people behave bad towards the police, they do not deserve proper treatment by the police.

Another example, *i.e.* that people feel that the police is only allowed to behave harshly towards those who are actually guilty of an offence, reminds of the value protection model's statement that

people are very strict in their reasoning that those who are guilty should be punished but those who are innocent should not. The results add to this model in that they not only confirm that those who are not guilty of an offence do not deserve to be treated harshly but also show that there are degrees of deservingness: those who committed a minor offence in some participants' opinions are more deserving of proper treatment than those who committed more serious offences.

These findings concerning the conditionality of treating people with respect suggest that people may not only have a moral mandate with respect to the outcome of criminal proceedings, as the literature suggests (this issue will be considered further on, in chapter seven), but also with respect to the procedure itself. They reason e.g. that those who behave well towards the police should be treated with respect and that those who act aggressively towards the police need not be treated friendly. Remember those offenders who were accused of relatively minor crimes that happened accidently or unwillingly and who expressed that they were treated as if they were a big criminal: this apparently goes against what I will for now call a 'moral mandate on procedure' instructing that the innocent should be treated politely. It remains to be seen if further indications of a 'moral mandate on procedure' will be found throughout the remainder of the dissertation.

One further remark concerning the conditionality of dignity and respect is that only one participant made a similar remark about the value of neutrality (see also below). Except for this one person (an offender), none of the participants made any comment that implied that the police are not obliged to be neutral in all cases. These findings suggest, then, that some procedural justice values are conditional (*i.e.* respect and dignity) whereas others are unconditional (neutrality). Also, remark that the fact that being treated with respect and dignity may be conditional does not necessarily imply that the other elements constituting 'standing' are conditional. This remains to be seen.

The relationship between receiving respect and (future) willingness to cooperate with the police

The results reported above confirm one of the basic premises of procedural justice theory, *i.e.* that there is a relationship between quality of treatment and willingness to report future victimisation or cooperate with the police. For example, a victim said that she was prepared to tell the police her complete story despite this being difficult for her because she had been treated very well, whereas an offender because of rude treatment did not dare to go back to adapt his statement. Respondents furthermore said that if the police act with force they cause trouble themselves; in case they behave calmly, offenders are more likely to cooperate with them. The results as such back up prior studies claiming that police officers are more likely to elicit confessions from guilty offenders when they behave ethically and humanely (see Holmberg and Christianson, 2002; Kebbell *et al.*, 2010) and that the use of coercive power is not helpful with a view to enhancing compliance (McCluskey, 2003).

The results, then, accord not only with procedural justice theory's stance that *future* willingness to cooperate with the police is influenced by the degree to which the police treats people with respect but in addition show that people's readiness to cooperate *at the time of arrest or reporting itself* too depends on this. Mark that not only the quality of the interpersonal treatment in terms of friendliness matters. Feelings of intrusion on dignity matter too. People may for example not report crimes to the police because the police give them the feeling that what happened was their own fault.

Limits to the moral mandate effect

The finding that when they feel disrespected by the police people might cease cooperation, the consequence of which is that the authorities may not have all necessary information when judging the case, is confusing in light of the value protection model's claim that people have a moral mandate that they would like to be fulfilled. On this basis, one would assume that they would fully cooperate with the police in order for all information to be available to the judge when deciding on the case. Yet one observes that relational concerns may prevent them from doing so; these may lead them to cease cooperation in fact-finding, even if this means that there is less chance that their moral mandate will be fulfilled. There may, then, be limits to the moral mandate effect. Supposing that people have a moral mandate, when they are not treated with respect they may be prepared to forego this moral mandate if doing so allows escaping the negative encounter with the police officers.

Relational concerns may thus limit the moral mandate effect. Skitka (2003, 2009), the leading 'moral mandate' scholar, acknowledged that in some cases, people value procedural justice over the realisation of their moral mandate. She predicted in particular that people are more likely to take a – in her terms – 'homo socialis' perspective when their need for status is not being met. This may be an explanation for the finding: the respondents felt earnestly disrespected and for this reason may have been prepared to take the risk that their moral mandate would not be realised in a later stage. The cost of participation may be too high for it to be worth the while.

The relationship between receiving respect and trust in the police

The results suggest a relationship between feeling recognised as a victim and having trust in the authorities. One victim testified about how the fact that the police had been behaving courteously towards her had raised her confidence both in those who investigated the case *and* in the judicial authorities. Another victim said that because the police had been behaving so poorly, she had lost her belief that the trial would settle the conflict. While there are many studies on the relationship between procedural fairness and trust in the courts (e.g. Olson and Huth, 1998; Tyler, 2001b; Buckler *et al.*, 2007; Denton, 2007), studies on citizens' police evaluations tend to focus not on trust but on

satisfaction (e.g. Tyler and Folger, 1980; Wells, 2007; Van den Bogaerde *et al.*, 2008) – exceptions are Tyler (2011) and Bradford *et al.* (2009a, 2009b). The stories reported here suggest that trust in the police too may be determined by police officers' interpersonal behaviour, thus confirming Bradford *et al.* (2009b) and their (2009a) argument that the relationship between contact and confidence is determined to a great extent by the degree to which police officers take victims' stories serious.

The influence of being treated with respect by one authority on trust in other authorities

The finding on the relationship between acknowledgement of victim status and trust in the authorities shows that trust in one of the authorities making up the criminal justice chain (*i.e.* the courts) is influenced by the degree to which one feels one can put trust in the authorities that act earlier on in the process (*i.e.* the police). The literature focusing on how the police and judicial authorities can increase citizens' level of trust in the police and the courts should take this into account. Whereas it has been argued (e.g. Sunshine and Tyler, 2003; Bradford *et al.*, 2009a) that the police/the courts/prosecution services can boost public confidence by improving the way they interact with citizens, there may be only so much one agency can do to increase confidence in its work because the level of confidence also depends on how other agencies treat citizens.

The need to give meaning to discourteous behaviour

People seem to experience a need to give meaning to the bad behaviour of police officers. After telling something about inappropriate behaviour of a police officer they often say 'I think they acted like this because…': they say for example that they understand why the police used force. They most often refer to the behaviour of the suspect to explain police officers' use of force or unfriendliness. This suggests two things. It seems, first, that people try to restore confidence in the police, which they risk losing upon witnessing the police's poor behaviour, by rationalising and explaining this behaviour. This may be because otherwise they lose confidence in a just world (see above) and thus in the fact that when they become involved with the police again one day they will be treated well. Second, contrary to people's tendency to overestimate the importance of dispositional qualities and underestimate the importance of situational qualities when trying to understand the causes of other people's behaviour (Zimbardo, 2007), the participants ascribed the police's use of force or unfriendly attitude not in the first place to individual officers' inherent characteristics but to situational variables (*i.e.* the behaviour of another person). This too may be a tactic for preserving the idea that if one day one would be approached by the police again, one will be treated well by the police officers.

The rationale for the importance of being treated with respect

Several interview fragments confirm the group-value model's assertion that the reason that people care about how they are treated by authorities is because the quality of the interpersonal treatment they receive from authorities (such as the police) influences their image of the self, albeit that it is more clear for offenders than for victims. Recall the offenders who considered themselves good citizens in general but had been treated harshly by the police ("as if I was a big criminal") and now felt labelled as a 'criminal' or a 'nobody'. Then there is the example of the offender who said he lost his self-confidence because of the way he was approached by the police. The importance of being treated with respect for dignity to victims seems to have to do especially with feeling acknowledged, and as such with the impact that bad treatment has on emotional recovery.

The relationship between trust in the police and need for participation

The victim described above whose confidence in the police grew as she experienced that they acknowledged her hurt and what had happened said that because of this experience, she did not feel a need to intervene/participate in the investigation of the case. Whereas trust in authorities has traditionally been related to willingness for cooperation with authorities (e.g. De Cremer and Tyler, 2007), this finding shows that the degree to which one puts trust in the authorities also influences the need for participation and exerting personal control over the proceedings.

The relationship between the different antecedents of procedural justice

One victim testified that she had been treated impolitely and for this reason felt "as if she was the offender". This quote shows that police officers' behaviour does not only influence perceptions of standing but also perceptions of neutrality, suggesting that perceptions of 'dignity and politeness' and perceptions of 'neutrality' are positively correlated. This observation is not new. The relationship among the different antecedents of procedural justice has been fleshed out by e.g. Tyler (1990: 141), who found that they are all positively related. From the description in Tyler (1990) one can however not deduct the exact correlation between 'politeness' and 'impartiality'. Wemmers' (1996) models of procedural justice reveal a correlation of .71 between respect and neutrality when victims talk about the police and a correlation of .875 when they talk about the public prosecution service. This means that respondents scoring high on 'respect' score high on 'neutrality', and vice versa.

§1.2. Respect for rights

Before starting the analysis of the issue 'respect for rights' three preliminary remarks are in order. First, the issue 'respect for rights' has not been clearly described in procedural justice literature, but on the basis of Tyler and Lind's (1992) paper it seems that justice theorists strictly conceive of this issue as respect for rights in a legal sense. I believe this is incorrect, because it turned out, first, that the respondents sometimes mentioned breaches of rights without being *aware* that a legal right had been breached and, second, that participants at several occasions had had the feeling that some 'natural' or 'moral' right had been breached by the police when actually they did not have a legal right to anything. Therefore I will take the category to be broader. As respondents' perceptions lead this dissertation, I chose to include in this category not just interview fragments relating to respect for/breaches of rights that have been defined by the legislator, but especially examples of situations in which respondents had *mistakenly* felt like one of their rights had been breached.

The second remark relates to victims specifically. The specific rights of victims of crime in Belgium relate to information, to practical and emotional support and to referral to specialised centres for victim assistance.[35] This means that there was considerable overlap between the categories 'concern for needs' and 'respect for rights'. In order to avoid repetition, all fragments from victim interviews relating to these matters will be discussed under the category 'concern for needs'.

A third remark is that below mainly *breaches* of rights are described. Throughout the analysis, few concrete examples of situations in which rights had been *respected* were found. This may be because in people's minds, losses are more powerful than gains. Tversky and Kahneman (1979, 1984: 342) introduced the concept 'loss aversion' to point to "the intuition that a loss of $X is more aversive than a gain of $X is attractive". This may explain why people are more prone to elucidate on negative experiences than on positive ones when evaluating other people's behaviour. Further support for this hypothesis is found in Weitzer and Tuch (2004) who, building on the literature suggesting that negative experiences with the police lower opinions of the police to a much stronger degree than positive experiences lead to more favourable opinions of the police, suggest that positive experiences may simply be viewed as normal by those who have positive prior views about the police or be discounted as an exception to the norm by those with a negative prior view about the police.

[35] Art. 46 Wet 5 augustus 1992 op het Politieambt, *B.S.* 22 december 1992; art. 5 K.B. 17 september 2001 tot vaststelling van de organisatie- en werkingsnormen van de lokale politie teneinde een gelijkwaardige minimale dienstverlening aan de bevolking te verzekeren, *B.S.* 12 oktober 2001; art. M.II.4° M.O. PLP10 9 oktober 2001 inzake de organisatie- en werkingsnormen van de lokale politie met het oog op het waarborgen van een minimale gelijkwaardige dienstverlening aan de bevolking, *B.S.* 16 oktober 2001; art. M.1. en M.5.2. Omzendbrief GPI 58 4 mei 2007 betreffende politionele slachtofferbejegening in de geïntegreerde politie, gestructureerd op twee niveaus, *B.S.* 5 juni 2007. Daarnaast zijn ook de voorzieningen beschreven in het Kaderbesluit van de Raad van de EU van 15 maart 2001 inzake de status van het slachtoffer in de strafprocedure bindend voor België.

§1.2.1. Description of results

As for the first category, *i.e.* occasions at which the police had (not) respected respondents' *legal rights*, I will cite the examples that were mentioned, with the caveat that the respondents often did not know that there had been a breach of a right or that a specific right had been given due attention. More attention will therefore go to examples of *perceived* breaches of rights.

Three offenders mentioned concrete examples of respect for rights. These were: (1) having been able to add a document (a letter addressed to the judge) to the file, (2) having been asked by the police officer at the start of the interrogation which method of note-taking was preferred (*i.e.* minutes mentioning nonverbal communication or minutes mentioning only the essential), and (3) having received food and drinks during the interrogation. Victims mentioned (1) that they had been allowed to call someone and (2) receiving food and drinks during the interrogation.

Nine offenders mentioned seven examples of how legal rights had been breached, though as said they themselves were more likely to say 'what the police did was unacceptable' and did not always know that a right had been breached. They mentioned (1) the police not giving them a copy of their statement (which is a breach of art. 28 quinquies § 2 CCP), (2) the police not respecting their duty for professional secrecy (breach of art. 28 quinquies § 2 CCP), (3) the police not giving the offender sufficient time to read her statement before signing it (breach of art. 47 bis 4 CCP), (4) the police dissuading the offender from altering his original statement (breach of art. 47 bis 4 CCP), (5) the police gaining unauthorised access to the offender's premises (breach of art. 15 of the Belgian Constitution (inviolability of the home), of art. 18 of the European Convention on Human Rights (right to privacy) and of art. 17 of the International Covenant on Civil and Political Rights (right to privacy)), (6) not having received drinks or food during the interrogation or while held in custody (breach of art. 5 of the Universal Declaration of Human Rights and art. 3 of the European Convention on Human Rights (right to humane treatment and physical integrity)) and (7) the use of physical force by the police (breach of art. 5 of the Universal Declaration of Human Rights and art. 3 of the European Convention on Human Rights (right to humane treatment and physical integrity)). Victims did not report breaches of rights.

By way of illustration I will describe two situations. First, the mother of one offender was shocked by the fact that the police had **admitted itself into her house without her permission**.

"Ze hebben dan geklopt maar Y. was boven en die had dat niet gehoord, en dan zijn ze zelf binnengegaan. Dat vind ik al niet kunnen. Y. heeft mij daarvoor daarjuist nog gebeld, mag dat eigenlijk wel mama dat die zomaar binnenkomen? Ik denk het niet he." ((Mother of) male offender, burglary and theft (respondent 43), participant)

Five offenders were appalled by **the police breaching their duty for professional secrecy**. One offender noticed that his ex-girlfriend was familiar with details about his case that he was not even acquainted with, which made him conclude that she had regularly been briefed by a contact person within the police force. He mentioned these leaks seven different times during the interview, which is an indication of the meaning that he attached to this breach of professional secrecy. It may be added that two of the offenders criticising the police for not keeping to professional secrecy did not dare complain about this to the officers' chiefs out of fear for reprisals. They said they were sure that if they would complain to the officers' chiefs about it, the officers would take revenge.

"Da's niet logisch dat ik morgen de telefoon pak en haar bel van seg wat heeft [het slachtoffer] verklaard? (…) Hier klopt iets niet. Misschien is er iemand die zij daar kent en die politieman vindt het nodig om dat te vertellen. Bewijs dat maar eens." (Male offender, intentional assault and battery (respondent 54), non-participant)

"Ik kan het alleen nog erger maken door dat door te geven, want dan krijg je weer meer vijandigheid van de politie, en sta je dan ergens verkeerd geparkeerd dan zul je wel prijs hebben. Ik ken ook mannen van de politie, die zeggen, probeer zo goed mogelijk overeen te komen, want we kunnen u verneuken, zo zeggen ze het, we kunnen u verneuken zo hard we willen. Dan denk ik ook, is dat nu allemaal de bedoeling?" (Male offender, violent theft and threat of arson (respondent 24), non-participant)

The second category is that of victims' and offenders' *perceptions that rights had been breached* when in fact there were no rights that they could invoke. These are in fact all examples of respondents condemning an in se correct procedure or decision; these just did not *feel* correct to them. For example, a common complaint of parents of adult yet young offenders was that the **police had not informed them that they had taken their child to the police office** for interrogation or that they had arrested their child. The parents, who had been worried to death, said that the police have a duty to inform them, or, in other words, that they have a right to be informed, even if their children have passed the age of eighteen. Other things that parents of young adults criticised was that they were **not informed about what had been said by their child during the interrogation** (one victim, one offender) and that they **had not been allowed to be present during the interrogation of their child** (one victim, one offender).

"En dan vroegen wij of ze ons niet hadden kunnen verwittigen, en dan kwam er nogal een redelijk kort antwoord van 'hij is 19 jaar, wij hoeven jullie niet meer te verwittigen'. Ik vond dat niet te doen. Er verdwijnen kinderen, uiteindelijk, 19 jaar, maar er gebeurt vanalles. Ik vond dat geen manier van doen. (…) Dat is maar één telefoontje dat je moet doen." ((Mother of) male offender, burglary and theft (respondent 41), participant)

Two offenders complained that they **had been detained by the police** and had had to spend the night in a police cell. Though there are no signs that the police by detaining these offenders broke any rules, it clearly felt unfair to them. The reason was that this measure in their opinion was disproportional to the offences that they had committed. Another element that provoked negative reactions from offenders, though from a legal point of view there was no problem, was **being handcuffed**. This was discussed above, yet it is one more example of an action that is legally correct but may be perceived as unjust. One offender complained about the fact that he had **not been allowed to call his family** to inform them of his arrest, yet again, in Belgium suspects do not have a legal right to do so. One last example is that of the victims who were surprised to find that they **could not recover their stolen goods** because the offenders said those goods belonged to them.

§1.2.2. Discussion

There is more to standing than interpersonal treatment

Whereas the concept 'standing' is usually interpreted in a narrow sense as elements concerning the interpersonal relationship between authorities and subordinates, listed above are aspects of respect for status that do not directly relate to interpersonal treatment. The aspect 'perceptions of respect for rights' seems to have been largely neglected in the face of constant attention to aspects relating to 'dignity and politeness'. The results of this study again broaden the concept 'standing' to include more than aspects relating to the interpersonal relationship between authorities and subordinates. They demonstrate that perceptions of respect for/breaches of rights too are important. They furthermore add to the existing literature in that they show which examples of rights people filling in surveys asking them whether they agree or disagree with statements such as "People's basic rights are well protected by the police in your neighborhood" (example from Sunshine and Tyler, 2003) may have in mind exactly when reflecting on such statements.

Importantly, the results reported above show that people when forming an answer to such questions do not necessarily refer only to actual breaches of rights. Above I described how perceptions of unfairness may result from procedures followed by or decisions taken by police officers that were in se correct. There are many occasions during a criminal procedure at which people feel that a right has been breached, when in fact that is not the case. This is a remark important with a view to the construct validity of surveys measuring the degree to which litigants perceive that their rights have been respected throughout a given procedure with one single item. Researchers relying upon quantitative measurements should be aware that answers to questions about breaches of rights are troubled by the fact that breaches of rights are not always recognised as such and that respondents also consider perceived breaches of rights.

Incompatibilities between respect for rights and concern for needs

The examples of people being dissatisfied about objectively fair procedures (that is, procedures that are specified by law and as such fair from an objective point of view) lead to the remark that perceptions of 'respect for rights' – interpreted as respect for legal procedures – and perceptions of 'concern for needs', two elements of 'standing', may conflict. The fact that police officers need to respect certain people's rights (e.g. they are not the ones to decide about returning to victims the goods that they claim were stolen from them) may imply that they cannot pay heed to these or other people's needs (they cannot return those goods to the victim). The fact that they are not obliged to inform the parents of young but adult offenders about the fact that they arrested their child implies that the parents' need for information is not met. There is thus a clear difference between objective procedural justice and subjective procedural justice, but also an incompatibility between different antecedents of standing, which may be problematic.

To my knowledge, incompatibilities between the antecedent elements of procedural justice have not been documented before; studies revealing correlations between the different antecedents, such as Tyler's (1990), have so far showed positive correlations only. Tyler (1990: 140) concluded that "the choice of procedures for resolving disputes or solving problems does not require making the trade-offs discussed in the literature on distributive justice". What Tyler points at is that distributive justice theorists have proposed a number of principles in order to assess the fairness of outcomes, such as equity, equality and need, that cannot be realised simultaneously. If one for example opts for the equity rule no equal distribution is realised; if one chooses to base the distribution of a good on an equality rule, those who are most in need of it may not receive the greatest amount of the good.

The finding that in some circumstances different antecedents of 'standing' may be mutually exclusive is problematic. Lind and Tyler (1988: 108) have considered the issue when discussing Tyler's (1990) results, stating that if Tyler would have found "that respondents saw some of the procedural qualities as mutually exclusive, [that] finding would pose a dilemma for anyone trying to design novel procedures that would be viewed as fair". They continue that "[i]n that situation, those designing a new procedure would be forced to make a decision about which attribute of procedural fairness should be maximized."

Thibaut and Walker (1975, see also Lind *et al.*, 1973) already discussed the problem of incompatibilities between antecedents of procedural justice. One of their studies into litigants' preference for accusatory as opposed to inquisitorial procedures for example showed that the procedures that people considered the most fair (*i.e.* accusatory procedures providing them with high process control) entailed high degrees of bias during information-gathering by attorneys. Thibaut and Walker decided on a hierarchy for organising these different elements by reverting to the distinction

they made between conflicts of interest and cognitive conflicts, asserting that in the latter case accuracy of decisions prevails and thus inquisitorial procedures should be used while in the former case procedures high in process control, that is, accusatory procedures, should be used.

Possibly the fact that incompatibilities between different antecedents of procedural justice were found in this study can be explained by the fact that the current study takes place within a context of criminal law, where the concept of rights is perhaps more painstaking than in nonlegal contexts. In each case, what was found is that (the absence *or* presence of) procedural rules may prevent from certain needs to be met and lead to people experiencing a sense of unfairness.

Remark that here too one finds indications of the fact that people may have a moral mandate not only on outcomes but also on procedures: they believe for example that there should be legal procedures obliging police officers to inform parents of the arrest of adult youngsters living at home, or to inform them of what their child said during an interrogation.

§1.3. Concern for needs

§1.3.1. Description of results

The police are the first authorities that victims and offenders encounter after what has been for them a difficult if not traumatic experience. The analysis of the interviews revealed that the police may be supportive towards victims and, to a lesser degree, offenders, in several ways. The respondents expressed (1) emotional needs, (2) practical needs, (3) needs for participation and (4) complaints about the police not being available when needed. The fifth category groups needs that cannot be met by the police because rules pertaining to the criminal procedure prevent them from doing so.

The respondents did not always make their needs towards the police explicit, that is, they did not always say 'I had a need for…'. While going through the interviews, I noticed that the police had had attention for participants' needs in many ways without the participants expressing it as the fulfilment of a need. For example, one element that will be discussed is that the police satisfied a victim's need for security by patrolling near her house. The victim did not explicitly state that she *needed* the police to patrol near the house, yet the police by doing so did meet an unexpressed need.

This observation, which is similar to the observation made above with respect to the issue respect for rights, in combination with the observation that the determinants of procedural justice as advanced by procedural justice theory so far seem to 'match' the current study's results, leads me to conclude that whereas procedural justice theorists may indeed have done a good job identifying the determinants of perceptions of procedural justice, those experiencing procedures do not make the distinction between these categories. People do not explicitly talk about 'respect for rights' or 'concern for needs'. They talk about what the police did well and what they did wrong. Yet all

elements that according to procedural justice theory determine perceptions of procedural justice seem to indeed play a role (the remainder of the description of results will show so).

Emotional needs

As to psychological or emotional support, several victims who were satisfied about the police intervention talked about how the police officers had done their best to reassure them, to put them at ease and calm them down, either immediately after the crime or in a later stage of the proceedings. They did this for example by assuring the victim that they had taken the offender away from the scene of the crime, by informing the victim that the offender had been put in preliminary custody, by staying on the telephone all the time from the moment the victim called them to report that she had been robbed until the moment the police arrived at the scene, by explaining victims why exactly the police officers were asking them certain questions and why they were following certain procedures. For example, a victim who had been driven around town by the police to help them find the offenders immediately after she had been robbed on the street said that what had been really important to her was that the police explained why it was necessary to start the search for the offenders immediately, as she was in shock and it was hard for her to do what she was asked. It seems, then, that being given a good explanation for the police's deeds and information about what happened to the offender after (s)he has been interrogated is the common denominator in these stories. Information and explanation seem to be what victims need in order to tranquillise.

"En dan hebben ze mij ook nadien nog gebeld, ja, dat Y. *(de dader)* daar bleef, en ook wel mij gerustgesteld." (Female victim of violent theft and threat of arson (respondent 28), non-participant)

The police may also satisfy victims' need for security, as said, which also is an emotional need because providing physical safety also leads to emotional safety. The police had for example been patrolling near the house of a victim of robbery the night after the robbery. A female victim of rape was pleased about the fact that the police had of their own accord appointed a female social worker to support her during the interrogation. The mother of a victim who was informed by the police that the offender had been released from prison praised the police for having helped her with informing her daughter about this. The way two victims of burglary talked about the loss of their goods and the satisfaction they expressed about the police trying its best to recover their stolen goods indicated that the police had paid regard to an emotional need rather than merely a practical need. Finally, all (three) parents who needed to take very young children to the police, either because the children themselves had been victimised or because the parent was victimised and could not arrange for childcare during

the interrogation, talked about the fact that the police had taken good care of their children, giving them toys and keeping them in a separate room.

"Ik vond het wel tof dat ze er de maatschappelijk werkster bijhaalden. Dat vond ik echt wel heel positief, dat hij zelf zei, ik ben een man, ik weet dat dat niet gemakkelijk is, daarom haal ik haar erbij." (Female victim of rape (respondent 38), participant)

"(…) ze zei, kom nog eens naar het bureel, ik wil het wel uitleggen aan de dochter, waarom hij vrij is en wat hij mag en niet mag. Omdat, om dat aan je dochter te zeggen, hij is vrij, … Dat vond ik heel moeilijk, en daar heeft ze mij bij geholpen." (Mother of female victim of sexual abuse (respondent 23), non-participant)

"(…) die kregen speelgoed en al en die kregen een kamertje en de deuren mocht open blijven dus ik kon die zien. Dus dat was wel in orde. Die werden goed opgevangen." (Female victim of rape (respondent 38), participant)

One victim was especially satisfied with the fact that a victim support worker had given her her telephone number for her to call any time. This shows genuine concern for the victim. In this respect, two victims mentioned how helpful it is to have one contact person at the police who they can ask all their questions to and who notifies them of important developments in their case. Only after they had finally found such a person had they felt some relief and found some peace. Victims are not happy about encountering a new police officer every time they contact the police, because it means that they have to tell their story over and over again and that nobody really knows their file.

A number of victims spontaneously mentioned that the police had provided them with leaflets of victim support organisations, yet there were only five of them, whereas the police are required to provide all victims who report a crime with this kind of information. However it is not possible to draw any conclusions about the degree to which the police fulfilled this task, as the other victims may well have received this information but just did not mention it during the interviews.

To conclude, there was also one *complaint*. It came from the mother of a child victim who felt that she had been neglected by the police when her child was taken for interrogation. She said that she had been "pushed into a small room, without any guidance" and that her child had been "ripped from her body". Another victim was in se content about the police intervention in her case, but she did mention that other victims could have been discontent about a suchlike intervention because the police had first dealt with the offender (it had taken several men to calm him down) and only after that had taken care of her. She said that she could imagine some victims being dissatisfied about the police first dealing with the offender and only then taking care of the victim, yet to her it had been good; the removal of the offender from the scene had made her tranquillise.

"Ik kan me ook voorstellen dat mensen over hun toeren zijn – in mijn geval hebben ze zich eerst met Y. *(de dader)* bezig gehouden alvorens ze mij kwamen ondervragen, dus voor hetzelfde geld zeg ik ze laten mij hier schoon zitten." (Female victim of intentional assault and battery (respondent 32), participant)

It is clear that the list of emotional needs expressed by victims is long. Summarising, fifteen victims mentioned thirteen emotional needs. In sharp contrast, only two offenders mentioned the police paying regard to such needs, though none of them expressed a *lack* of police regard for their emotional needs. Offenders just did not talk about the police in terms of emotional support that often. One offender who was in preliminary custody expressed approbation of the fact that the police had come to collect him for an interrogation and eventually had held him at the police station for almost a whole day; they said that they understood how hard it was for him to be in prison and gave him a chance to spend some time out of prison. The participant appreciated that as a very humane thing to do. Another offender, who had burst into tears after a very tough interrogation, told that one police officer had come to him to ask if he was alright and stood with him for a while.

Practical needs

Going to practical needs, two young men who had been detained for 24 hours were offended by the fact that the police after deciding to release them just put them on the street and did not in the least care about how the two men would get home. Another more practical need expressed by offenders was to recover belongings that had been confiscated. One of them criticised the fact that he had been sent from pillar to post when trying to recover his mobile phone. Another offender was positive about the fact that the police took some effort to make sure he could recover his car.

"Als ik nu alleen was vrijgekomen, als eerste bijvoorbeeld, in het midden van de nacht, ik had niet thuisgeraakt. Mijn gsm was plat, en er reden geen bussen, had ik dan naar huis moeten wandelen of zo? (…) Dat vond ik allemaal zo... Ik word hier opgepakt, ik word ginderachter in de bak gezet, en ik word gewoon terug buiten gezet. En dat is het. Trek uw plan maar." (Male offender, burglary and theft (3), participant)

The police also provided support on a more practical level to at least nine of the victims participating in this study. Six victims mentioned that they had been taken to hospital by the police or that the police had offered to do so. Many of them made an explicit link between satisfaction with the police and being brought to hospital by the police, thus showing the importance of taking care for victims. Other ways of offering practical help were removing the offender's belongings from the victim's premises and bringing a victim in a town strange to her back to her car that had been left in a car park. All these efforts on behalf of the police contributed to a positive evaluation by victims.

"(…) nadat we die daders ontdekt hadden hebben ze mij naar spoedgevallen gebracht, en ze hebben daar tijdens mijn verzorging een hele tijd zitten wachten en daarna hebben ze het verhoor afgenomen. Dat was heel correct." (Male victim of intentional assault and battery (respondent 12), non-participant)

The need for participation

A third category of needs expressed by victims and offenders were needs for participation in the criminal procedure. In order to structure these needs, a distinction was made between needs for active participation and needs for passive involvement. The distinction is based on Edwards' (2004: 975) typology of victim participation in criminal proceedings (see Table V-I on the next page). The crucial distinction Edwards makes is between types of participation that require active contributions from the victim and types of involvement that are typically called participation yet still relegate victims to a passive role. The first types of participation Edwards labels 'control', 'consultation', 'information provision' and 'expression' (with control offering the victim the most active role). Under the second type Edwards classifies 'receiving information'. Receiving information according to Edwards lacks the essential element of participation, which is active contribution from the victim. He does not deny the importance of receiving information but stresses that participation presupposes an interactive element, that is, an active role for the victim.

Edwards is not the only one to take the standpoint that receiving information is not a form of participation; Malsch (2009) too has written that information-provision to citizens is to be viewed as a complement or alternative to participation, and she too has written that participation implies a two-way contact between the citizen and the authorities. It presupposes both citizen and authorities to contribute to the interaction. Malsch's framework is depicted in Table V-II, which also can be found on the next page.

Both victims and offenders mentioned more needs for receiving information than needs for active participation. **The degree to which they had received information** from the police was discussed by fourteen victims; for a fair number (seven) of offenders too the degree to which they had received information from the police was an issue, but not to the degree it was for victims. Also, whereas the victims were almost equally divided between those who were and those who were not satisfied about the (amount of) information they had received, offenders were predominantly discontent.

When it comes to information, what victims were *most negative* about was about the fact that the police had not informed them about whether the offender has confessed to the crime or of what the offender said during the interrogation. They felt left in the cold after they had filed their complaint.

"Maar nadien is het zo, dan vind ik wel dat er iets meer informatie zou mogen doorstromen naar ons. Ik weet niet wat er allemaal wettelijk is vastgesteld, wie er wat allemaal mag communiceren, dat weet ik niet, maar je blijft dan zo in het ongewisse over wat er verklaard is door die persoon." (Male victim of theft (respondent 37), non-participant)

"(…) als je dan alles doet wat ze *(de politie)* gevraagd hebben, dan ben je afval voel ik me dan. Dan laten ze u vallen zo. Geen 'hoe gaat het nu met u', of 'is alles goed verlopen', of 'kan ik nog iets betekenen voor u', of kan ik iets… inlichtingen geven over het een of ander." (Mother of female victim of sexual abuse (respondent 23), non-participant)

Table V-I: Edwards' typology of victim participation in criminal proceedings
(Source: Edwards, 2004: 975)

	Participation type	Obligation on criminal justice decision maker	Obligation on victim
Dispositive	*Control*	To seek and apply victim preference	Non-optional supply of preference; victim is the decision maker
Non-dispositive	*Consultation*	To seek and consider victim preference	Optional supply of preference
	Information-provision	To seek and consider victim information	Non-optional supply of information
	Expression	To allow victim expression	Optional supply of information and/or expression of emotion

Table V-II: Malsch's scheme of interaction between citizens and the criminal justice system
(Source: Malsch, 2009: 18)

	Direction	Initiative
Participation	citizen <-> system	citizen
Information	system -> citizen	system
Fair treatment	system -> citizen	system

Likewise, the decisive issue for those victims who were *satisfied* about the information given by the police was to be informed about what had happened to the offender after the interrogation (e.g. was (s)he released?) and that the police had told them what to do or who to go to with questions. For example, one victim had been informed on the importance of going to a doctor to have his injuries recorded, and two employers had been informed on how to catch stealing employees in the act.

"En ze zijn dan ook nog eens langsgekomen om te komen zeggen dat een van de daders vrijgekomen was. (…) Ik heb ook van de politie telefoon gekregen toen ze opgepakt waren, dus ik heb ook nooit het gevoel gehad van ik moet zelf… (…) … erachter gaan lopen om iets te weten. Eigenlijk is alles altijd heel duidelijk geweest." (Female victim of robbery (respondent 47), participant)

"Dat hadden ze ook wel gezegd, dus de belangrijkste informatie heb ik ook wel gehad, dat ik vaststellingen moest laten doen, de dokter, het ziekenhuis, dat ik die verslagen moest meebrengen wanneer ik opgeroepen werd. Dus de nodige informatie had ik wel." (Male victim of intentional assault and battery (respondent 21), participant)

Fewer offenders than victims talked about receiving information, but those who did were mainly discontent. Frustration was due mainly to the police's failure to inform the offenders about the reason for taking them to the police office and about what would happen to them after the interrogation. Also, there is a need for the police to explain the procedure of being taken to an investigating judge, being taken into preliminary custody, etcetera.

"X. *(de respondent)* vroeg dan waarover het ging, en ze zeiden, dat weten wij niet, wij weten alleen dat we u moeten komen halen." ((Mother of) male offender, intentional assault and battery (respondent 26), participant)

"Ik dacht toch van wat gaat er allemaal gebeuren, je weet niet wat er gaat gebeuren, ze pakken u gewoon mee, ze zeggen dat je moet meegaan naar die procureur en zo, boenk terug de auto in en handboeien aan, met twee aan elkaar vast." (Male offender, burglary and theft (respondent 41), participant)

Four offenders told about how they had searched for more **active forms of participation** in the police investigations. To one of them it had been very important that she had been allowed to attach to her statement a document in which she explained what had induced her to commit the offence. One offender's mother wanted to tape a conversation between her son and the actual offender, and one person considered the police investigation so weak that he started a search for evidence himself. The mother of a (young) offender felt a great need to tell the police officers investigating her son's case about his home situation and that his accomplices were not really friends of him, etcetera.

"Dan heb ik mijn ding ook kunnen zeggen, over hoe de situatie in elkaar zit (…) dan vind ik ook dat ze de ouders eens op gesprek moeten vragen. Dat je weet hoe de thuissituatie is, wie de vrienden zijn." ((Mother of) male offender, burglary and theft (respondent 41), participant)

The underlying reason for these respondents to look for a way to become involved was to make sure that all relevant information would be available to the judge at a later stage. They wanted to reassure themselves that the judge's decision would be based upon accurate and complete information. This will later on be called a concern for 'fact-based decision making', which is an element of 'neutrality'.

(Only) four victims referred to what I call active participation. Two victims mentioned that the police had told them that they could change or add things to their statement at a later time. One person had felt a need to participate in the search the police conducted in the homes of the thieves who had stolen many of his goods. Almost between the lines of two victim interviews, references were found about the importance of telling one's story to the police.

Throughout three victim interviews negative consequences of being involved in the criminal proceedings were detected. Two victims expressed distress about the fact that they had been called by the police for an additional interrogation some months after the offence, because they had just recovered from their experience and would have to relive it. One victim had felt like she had been forced to participate because the police did not take any action in her case: she had taken great pains to get things moving herself. This, so she said, had made her feel like she had been victimised twice: first by the offender, then by the fact that she had had to fight so hard to get the police moving.

"Ik heb wel zo het gevoel dat ik er enorm voor moet vechten, ik vind het, het gevoel dat ik heb is dat ik twee keer slachtoffer ben: van hem, maar ook een stuk van de politie en de rompslomp daar rond." (Female victim of stalking (respondent 18), non-participant)

The need for police intervention

The fourth category of needs was a **need for a police intervention** in a particular situation – two offenders and four victims complained that the police had not been available to them at a time when they had needed them. For example, one victim had informed the police that her neighbours had regularly seen her offender hanging around near her flat and had asked them to talk to him in order to prevent future victimisation. Yet they had said that they would only take action if she would be victimised, and that in that case she would need to call the emergency services. Three more victims testified about the police's unavailability:

"Ook bijvoorbeeld (…), hij *(een medeslachtoffer)* moet laat werken, de politie van (stad) is open tot tien uur, je komt daar toe om tien voor tien, en ze kunnen die klacht niet meer opnemen. En dat is zo constant zo…" (Female victim of stalking (respondent 18), non-participant)

The two offenders in fact indicated that if the police had helped them when they had asked them to, they would not have committed the offence they committed.

"Ik ben over de schreef gegaan terwijl ik dat op een heel andere manier had kunnen doen, hoewel ik dat al geprobeerd had, via de politie. Als die mensen niet gewillig zijn om te helpen…" (Male offender, violent theft and threat of arson (respondent 24), non-participant)

Also, one of the offenders said that if he calls the police they are not eager to intervene – they think he can solve situations himself because he has the reputation of being a fighter ("als ik zelf eens een pak rammel krijg, en je belt dan de politie, dan krijg je wel het antwoord 'jij kunt jezelf wel verdedigen'", respondent 31). This issue the respondent brought up in answering the question whether he has confidence in the police. In other words, there may be a relationship between having the feeling that the police are available and trust.

The criminal proceedings preventing needs to be met

A fifth and final category of needs was created as throughout the analysis it became clear that victims had certain needs that the police could not pay heed to because the nature of the criminal proceedings prevented them from doing so. For example, four victims testified about how difficult it was for them to have the police in their homes. This is of course often part of the procedure when a crime is reported, yet to victims it was difficult to deal with the police's presence in their house or at their door. The two victims described above who had been reluctant to go to the police office again for a new interrogation provided for another example of how the criminal proceedings may have been conducted correctly yet felt unfair to victims. These victims had a need to be left in peace that could not be met because the criminal proceedings demanded otherwise. A last example comes from a victim who complained about a lack of opportunities for participation.

§1.3.2. Discussion

The importance of police assistance to victims

As many point out (e.g. Winkel and Vrij, 1995; Winkel and Blaauw, 2001), the police are often the first to arrive at the scene of the crime and frequently the first or even the only agency to which victims (can) tell their story. The police are therefore faced with victims with various types of needs;

the police have been described by Winkel and Blaauw (2001: 326) as "a frontline organization for selective referral of "needy victims" to victim support agencies". Yet supporting victims is traditionally not perceived as a key task of police officers (Mawby and Gill, 1987).

As for offenders' needs and the role of the police in heeding their needs, the literature is poor. I found some studies on the needs of inmates (e.g. Clements, 1986; Aubry and Hough, 1997), but not on those of suspects. I anticipated that the current study would contribute to filling that void, but found that offenders did not express many needs for police care on an emotional or practical level.

The current study does corroborate the stance that victims have many emotional and practical needs that the police can pay heed to. The needs reported were similar to those found by Lemonne and Vanfraechem (2010), such as the need for the police to listen to their story (emotional) and to bring them home after the interrogation or to bring them to the hospital (practical). Though indeed the argument that it is not the police's core business to take care of victims is often put forward, the needs expressed are mainly straightforward ones that do not require being thoroughly trained in crisis intervention and that can quite easily be taken care of by police officers. In this I agree with Tyler (2011), who too writes that the changes needed to police functioning in order for the police to be viewed as more fair are relatively simple and easy to implement.

As for police attention for victims upon arrival at the crime scene, one victim said that the police had in her case first focused on the offender (in order to calm him down), and explained that though she did not feel bitter about this herself she could imagine that other victims would. What this victim points at is similar to Winkel *et al.*'s (1991) suggestion that the police should always make sure that one of the officers arriving at the crime scene can fully concentrate on the victim; this officer should not be occupied with technical aspects of the intervention. The authors' proposal can only be supported when taking into account how many different needs the victims participating in this study had; moreover, a number of them explicitly said that the fact that the police had taken care of them (and their children) led them to positively evaluate the police.

The need for information

The results reported above show that the issue 'concern for needs' is dominated by respondents' need for information. The positive effects of receiving information showed not only in the results on the need for participation but also in those with respect to emotional needs. It is well-known that receiving information is one of the focal issues for victims when evaluating encounters with the police (e.g. Wemmers, 1999). Yet offenders too took the issue seriously. I will discuss both groups.

Victims[36] Starting with victims, Winkel and Vrij (1995) found that the degree to which the police behave supportive immediately after the victimisation (e.g. by paying victims a follow-up home visit or informing them about victim support organisations) has an impact on the quality and speed of victims' coping processes. The current study suggests that *receiving information especially* is important. The type of information needed is information about the identity of the offender, whether the offender is caught or is at liberty, what the offender thinks about the facts, etcetera. Remark that the type of information that victims expect from the police is information that is very much offender-oriented. They did not so much complain about a lack of information on the course of legal proceedings or the workings of the criminal justice system. The central question is: who is the offender and what happened to him/her (that is, is (s)he at liberty?). This may be because in the immediate aftermath of the victimisation experience victims are especially in need of security; the realisation that someone has hurt them intentionally leads them to distrust others and to view their world as less safe (Greenberg and Ruback, 1992; Herman, 2010). Knowing what happened to the offender contributes to an immediate feeling of security; knowing how the criminal proceedings will proceed does not and is therefore secondary at that moment.

It could therefore be – but this remains to be seen throughout the further analysis – that victims expect other information content-wise from the police and from the judiciary. Support for this stance comes in an indirect way from Aertsen and Hutsebaut's (2010) study on family members of road traffic victims: these authors found that for some victims, receiving a lot of detailed information immediately after they found out about the traffic accident that killed their child is too confronting and too burdensome. It is better in some cases to provide victims only with basic information immediately after the offence and to convey additional information at a later moment, when they have had time to recover from the shock. The current study confirms that there is a need for more insight into the timing of providing them with different types of information.

Contrary to the victims in Shapland *et al.* (1985: 49), about whom the authors wrote that they "were almost as active in requesting information as the police were in providing it", the victims (and offenders, for that matter) that participated in the current study did not actively seek for information. They expected the police to come to them with information. The only exceptions are the parents of

[36] Depending on their exact status (*i.e.* civil party or 'injured person' ('benadeelde persoon/partie lésée')), victims in Belgium have the right to be informed about certain steps of the criminal procedure. When they register as an 'injured person', they have to be informed (1) in case the prosecutor decides not to prosecute the offender; (2) in case an investigating judge is appointed to investigate the case; and (3) about the date of the trial. See art. 5bis V.T.Sv. Note that unlike the original Dutch and French terms, the translation chosen ('injured person') may wrongfully give the impression that only victims of violent crime can register as injured person. Yet all those who have suffered damage caused by a crime can.

the young offenders. The other participants complaining about not receiving sufficient information resigned themselves to this situation. This result accommodates that of Aertsen and Hutsebaut (2010), who recommend the police to on their own account recontact victims after a while to ask if they have any further questions or demand any further information and to not wait until victims themselves ask for information. The results of the current study confirm that this would be very much appreciated by victims and could contribute to positive feelings of procedural justice. On the other hand, the police should be careful to explicitly introduce this new contact as a means for providing victims with extra information, as two victims expressed distress about being recontacted for a new interrogation. Of course follow-up interrogations may be indispensable, but victims' reactions could be mixed depending on whether at this occasion the police limits itself to asking victims additional questions in view of fact-finding or also provides information.

Offenders Whereas for victims being informed relates to being respected and to security/safety needs, and as such to well-being, for offenders it seems to have to do more with uncertainty and control. When offenders are arrested they cease having control over what happens to them and thus find themselves in a state of uncertainty. Building on the uncertainty management literature (see chapter three), this may be the reason why being properly informed about the course of action after the arrest or interrogation may be so important to them. One could argue that receiving information allows offenders to reduce the uncertainty and to again administer their life to a certain degree, at least until further decisions about prosecution are taken.

Another possibility is that receiving information reduces uncertainty because it reduces the threat value of what is happening through a reappraisal of the situation. I refer to Folkman *et al.* (1991) who, building on Lazarus and Folkman's (1984) transactional model of stress management, view stress as "a relationship between the person and the environment that is cognitively appraised by the individual as personally significant and as taxing or exceeding resources" (p. 240). Stressful situations are first cognitively appraised by people experiencing them – they determine what the situation means to them as well as their emotional response –, next, the individual uses coping techniques to change the person-environment relationship. Because of the use of coping techniques this relationship is constantly reappraised, that is, when new coping techniques are acquired people re-evaluate the situation. It is therefore possible that a situation that was at first regarded as unchangeable is later appraised as changeable. In combination with Vermunt and Steensma's (2003) finding that fair treatment is a stress reducing factor, receiving information from the police about one's situation, about the charges and about the possibilities for legal representation, to name a few examples, may be regarded as a coping technique. Receiving information reduces the threat value of the situation because the individual feels better equipped to master it, and thus reduces uncertainty.

The need for active participation

The great need for receiving information as compared to the relatively small need for active participation in this study's sample is noteworthy. What is remarkable is not so much that there is a great need for information but that there is such little need for active participation in the proceedings, at least in this first (police) phase. Again I will discuss victims and offenders separately.

Victims Few victims said that they would have preferred to be involved in the police investigation of the case to a greater degree. On the basis of procedural justice theory one would perhaps expect a greater need for active participation, yet on the other hand, studies confirming victims' need for active participation in criminal proceedings have focused on victim participation in trials, not in police investigations. Therefore, not much was known so far about the need to participate in the police investigation, and the current study suggests that this need is low.

What could be the explanation for the small need for active participation in these investigations? I see two possible reasons. First, remember that most victims were satisfied with the way they were treated by the police. Being treated with acknowledgement and respect, as one victim's story suggests, leads them to put trust in those investigating the case, and as such may eliminate a need to personally exert control over the police investigation. A second explanation may be derived from the value protection model's assertion that people pay no attention to whether they have had a chance for participation in decision making procedures in case their moral mandate has been respected. While the value protection model focuses on the final outcome of proceedings, one could hypothesise that people also have moral mandates on various decisions that are taken *during* those proceedings. Keeping in mind that people according to the value protection model hold the moral conviction that the guilty should be punished and the innocent should be set free, it could well be that people have a moral mandate on the outcome of the police intervention, which would be that the police should catch the offender. One could hypothesise that if the police meets this moral mandate, people have no further need for active participation in this phase of the proceedings.

Most victims participating in the current study, assuming they had a moral mandate as described here, had this moral mandate met: either their offenders had been arrested immediately, or they knew the identity of the offender and that the police would interrogate him/her soon. This could explain the small need for active participation in this study's sample. If this explanation holds true, the finding extends the moral mandate literature. Obviously more specific research is needed, and it is also the case that six victims at the time of the interrogation did not yet know whether their offender would ever be caught. But as all victims participating in the study were contacted to participate in mediation, and this offer is only made in cases where the offender was arrested, all victims eventually had this moral mandate – assuming it *is* a moral mandate – that the offender should be arrested met.

Offenders The offenders who (would have wished to) participate(d) in the proceedings in a more active way did so in order to make sure that the file would include all the information necessary for the judge to make an accurate decision. In other words, their reason for participation was instrumental. This observation bears importance with a view to the discussion in procedural justice literature on the value-expressive or instrumental value of voice/participation.

Secondary victimisation as a consequence of participation

The results learn us something about the value of participation as they show that participation may cause secondary victimisation. Secondary victimisation refers to victims feeling re-victimised by negative reactions from police officers or other authorities (Winkel and Vrij, 1995); it has been described as "the aggravation of the primary offence by the insensitive behaviour of others" (Reeves and Dunn, 2010: 52). In this study only one victim literally said that she felt like she had been victimised twice, once by the offender and once by the police. Yet as to the cause of feeling victimised by the police she referred not so much to police officers' attitude but to the fact that the police and the judicial authorities took no action in her case and she had to force everything herself. Secondary victimisation has traditionally not been related to participation but to outcome satisfaction and procedural justice (e.g. Orth, 2002) and to disrespectful behaviour by authorities (e.g. Winkel et al., 1991; Reeves and Dunn, 2010). This study advances a new factor causing secondary victimisation, *i.e.* feeling forced to participate in criminal proceedings.

Procedural justice theory, which has consistently promoted victim participation in criminal proceedings, seems to have largely neglected the possibility that participation in criminal proceedings may have undesirable effects. But Erez *et al.* (1997) and Hoyle *et al.* (1998) are among those who have pointed out that participation in criminal proceedings may indeed add to victim distress. Victims are often obliged to participate in criminal proceedings (e.g. as a witness); this kind of 'forced participation', then, may in itself cause secondary victimisation, independent of other factors such as how one is treated on an interpersonal level. Taking this argument further, it may also explain the satisfaction rates that have been reported with respect to victim-offender mediation practices (e.g. Strang, 2002; Braithwaite, 2003a; Umbreit *et al.*, 2003; Dignan, 2005; Sherman and Strang, 2007), as voluntary participation is precisely a main principle of mediation. Evidently, the effect of 'forced' participation on secondary victimisation should be further tested by means of quantitative research.

The relation between trust in the police and the need for participation

Above I described how one victim lost her trust in the police completely because they did not take care of her case and never gave her the feeling that they took it seriously. For this reason, she had felt

obliged to try to get things moving herself, which she described as a fight. One finds that there is a relationship between trust in authorities and feeling the need to/feeling obliged to participate.

The difference between objective procedural justice and subjective procedural justice

The category of needs that could not be taken into account by police officers for procedural reasons allows one to see the difference between objective procedural justice and subjective procedural justice as explained in chapter two. Procedures that are in se just as all legal prescriptions were followed may be perceived as unjust by those experiencing these procedures. This category of needs furthermore provides a further indication of the existence of a moral mandate on procedure. People have concrete ideas about how procedures should be conducted in order to be fair.

§1.4. Social standing

§1.4.1. Description of results

I created a category labelled 'social standing' as two respondents (victims) mentioned that they feel **shame and embarrassment when the police come to their house**s. Police cars are marked and consequently nosy neighbours can see that the police visit them.

"Ze belden ook om te vragen voor een afspraak, of het ging om nog eens te komen praten, en dan ging ik altijd naar het politiebureel. Ik had zoiets van: politie weg van mijn deur alstublieft. (…) blijf alstublieft in uniform weg. Ook naar buren toe." (Mother of female victim of sexual abuse (respondent 23), non-participant)

§1.4.2. Discussion

It is in se not surprising that concerns about their reputation play a role in victims' evaluations of their experiences with the police, as the group-value model states that fair procedures matter precisely because they convey information about group status. What is different however is that procedural justice theory has focused on group authorities as the source of perceptions of procedural (in)justice, whereas the results reported here suggest that peers too may be a source.

§2. Neutrality

Neutrality according to Tyler and Lind (1992) involves (1) absence of bias or prejudice, (2) fact-based decision making and (3) honesty. All interview fragments pertaining to neutrality could be fitted in one of these categories; there was no need to create new categories. Furthermore, victim interviews did not show any references to honesty, and all interviews were dominated by absence of bias or prejudice. All three categories are discussed below.

§2.1. Absence of bias or prejudice

This category groups all interview fragments that relate to (a lack of) impartiality of the police in the performance of their duties. 'Absence of bias' was interpreted as impartiality between victim and offender or between accomplices; 'absence of prejudice' was understood as absence of premature judgement about the alleged offender's guilt or about the victim's role in the offence.

§2.1.1. Description of results

Starting with *absence of bias*, two victims accused the police of favouritism. They had the impression that **the offender had contacts within the police force** that were either **protecting him or supplying him with information**. One victim for instance was convinced that the police provided her stalker with information on the identity of her visitors based on these visitors' license plates. One offender mentioned an example of the **police favouring the victim(s)**. The police upon arresting him in the presence of his victims had told them that they could go to a bailiff who could then confiscate goods of the offender at his place in order for them to get monetary compensation.

This was the only offender complaining about the police favouring the victim(s), but five offenders reported having had the impression that **the police were protecting or favouring an accomplice**. For example, one was upset about the fact that he had been put in a police cell for a night while an accomplice, who contrary to him had a criminal record, was not. Another offender declared that the police had urged him to adapt his statement to absolve his accomplice of the crime; he had felt so overwhelmed that he indeed changed his statement.

"R1: Hij wordt daar precies een beetje beschermd. Anders zegt die agent niet tegen u dat je je verklaring moet wijzigen voor hem.
R2: Want dan interesseert dat u niet als politieagent, wat voor hem de gevolgen zouden zijn. Maar als je daar iemand kent of zo… dan kan dat wel he, van oei ik mag dat hier niet laten gebeuren want dat is de zoon van..." ((Mother and father of) male offender, intentional assault and battery (respondent 26), participant)

As to *absence of prejudice*, two victims were surprised to learn that the police did ***not*** **act racist** in their case. For example, a person of mixed ancestry had expected that the police upon seeing him would have assumed that he had incited the fight he had been involved in. He had been pleasantly surprised that they had not. Two victims of breaking and entering said the following:

"R1: Mensen hadden gezegd hier in de buurt kamperen zigeuners, die hebben uw huis in het oog gehouden en die wisten dat je er niet was (…). De politie zei het zijn geen zigeuners. (…)
R2: Stereotypen zijn negatieve dingen die over die mensen bestaan, en de politie werkt daar toch niet aan mee. Het

was duidelijk dat ze niet wilden… Dat vond ik positief. Correct van hen." (Male and female victim of burglary and theft (respondents 51 and 52), non-participants)

Then there was the issue of **prejudice about the victim's role (guilt) in the offence**. The mother of a victim of sexual abuse, who had had a relationship with her daughter's assailant, was very positive about the police not showing any sign of disapproval towards her despite her role in the story. Another victim's mother did fault the police for judging her; she felt that they put the blame for her son's behaviour on her and felt very irritated about this.

"(…) maar wat ik gedaan heb was ook niet correct. (…) Maar ze waren heel luisterend, ze zeiden ook van kijk, we zullen zien en alles onderzoeken. Ik heb nooit het gevoel gehad dat ze dachten, dat ze een vooroordeel hadden. Dat was voor mij heel belangrijk." (Mother of female victim of sexual abuse (respondent 50), participant)

"(…) die had zijn mening al gemaakt en die deed uit de hoogte en, normaal gezien moet je als politieman heel neutraal blijven, maar hij was echt niet neutraal en had echt al zijn gedacht erover (…) Dat ik zoiets had van, mens, wat weet jij er nu van hoe het leven hier is met mijn zoon (…). Ik dacht, kom erbij wonen en zie zelf met uw eigen ogen hoe het hier loopt." (Mother of male victim of intentional assault and battery (respondent 30), participant)

Offender interviews revealed quite some issues pertaining to prejudice. Four offenders mentioned that **the police had pressured them into confessing to crimes they did not commit** or at least had tried to do so because they readily assumed that they were guilty. They did this for example by threatening that if the offender would not confess, they would keep him in custody for a longer time, by threatening with the time they would have to serve in prison if they kept denying the offence or by threatening that the offender would not get his car (which had been confiscated) back if he did not confess. Note that none of the victims reported having felt pressured to say things they did not mean to say during the interrogation or had felt that words had been put into their mouth.

"R1: (…) ik wist niet dat het zo grellig was. Ik zeg ja, zit ik hier voor dat vechtpartijtje van deze nacht of zo, 'neenee, voor een gewapende overval bij nacht met bendevorming, daar staat twintig jaar op he manneke'.
R2: Je weet allemaal niet hoe of wat, en dan beginnen ze met die jaren in den bak en dat we hier nog niet weg zouden zijn." (Male offenders, intentional assault and battery and vandalism (respondents 9 and 10), participants)

Four offenders explained that the police had **condemned them from the very start**; they would not take the offenders' stories and statements into account. One man said that the police had tried its best to **provoke him into aggressive behaviour**. He suggested that they were after creating extra 'proof' that the man was an aggressive person, in order for that to be used against him later on.

"Maar die ene begon dan te zeggen dat ik aan het liegen was, en dat hij tijd had tot 's morgens vroeg. (…) Ze zitten wat te pushen tot je iets lost. (…) Ik vond het heel erg dat ze mij niet direct geloofden." (Male offender, theft (respondent 40), non-participant)

Two offenders, both recidivists, reported the feeling that the police are **prejudiced on the basis of offenders' criminal records**. According to these offenders, the police do not take the effort to conduct a thorough investigation about offences that are brought to their attention if one of those involved is a recidivist: in this case they just assume this person's guilt. These offenders in other words make a link between one's criminal record and the police's willingness to conduct a good investigation. One other offender talked about how, now that he has been registered as 'aggressive', all police officers he will meet in the future will be prejudiced towards him and will treat him harshly.

"Ik heb de ervaring dat ze dit, zoals met elke zaak, dat ze dat dossier… ze hebben iemand met een strafblad, ze hebben een gekwetste, dat is een afgesloten zaak. Ze willen daar gewoon niet verder op in gaan." (Male offender, intentional assault and battery (respondent 7), non-participant)

"Dus ik heb echt zoiets van allez, dat is weeral echt zoiets waar met de klak naar gesmeten is, zo van, ah ja, we zullen die maar geloven. En ik denk vooral, wat het nadeel is, is dat ik en mijn vriend een gerechtelijk verleden hebben. En dat ze gewoon zullen gezegd hebben: ah ja, die zijn daar een beetje voor bekend, we zullen die maar pakken." (Male offender, intentional assault and battery (respondent 8), non-participant)

An additional example of how offenders may be treated differently because of their past was raised by an offender who said that once he had called the police because of being assaulted by others yet the police did not come to his rescue: because he has a past of fighting and assaults on others, they thought he could perfectly take care of himself. This example was described above.

To conclude this part on absence of prejudice, I mention that there was one victim who remarked that "just because the police should be objective and neutral that does not mean that they should behave in an impersonal or detached manner". So while she did not say that respecting people's dignity and behaving forthcoming on the one hand and neutrality on the other hand are incompatible, her remark does lead to reflection about possible incompatibilities between the antecedents of procedural justice. There may be situations in which authorities cannot at the same time treat parties to a conflict friendly and forthcoming and still appear neutral, situations in which the perceived care for one antecedent is neutralised by the perceived lack of care for another one.

§2.1.2. Discussion

Concretisation of the requirement "absence of bias and prejudice"

Above I described the results pertaining to absence or presence of bias and prejudice. Victims and offenders mentioned much more diverse examples of how they experienced bias or prejudice than was expected on the basis of literature. For example, offenders' feelings that accomplices had been favoured were not expected. The literature tends to focus on the authorities favouring one conflict party over the other, which in criminal law would mean favouring the victim over the offender or the other way around. Another example that was not expected is the importance that offenders attach to prejudice on the basis of criminal records. Therefore again I feel the study has been able to both concretise and broaden the concept under discussion, *i.e.* 'absence of bias and prejudice'. The results may hence provide inspiration to future researchers aiming to study the concept.

A moral mandate on procedure

Above I reported about the conditionality of 'dignity and politeness' and also shortly touched upon the fact that only one participant expressed a similar feeling about neutrality. This participant, an offender, said that if he would be faced as a police officer with "people like Dutroux[37], of whom I know very well what they have done", he would not be inclined to be open to contra-arguments. The excerpt "of whom I know very well what they have done" demonstrates that neutrality may for this participant be conditional but only insofar as the police is sure about the suspect's guilt. This immediately reminds of the value protection model's stance that as long as their morally mandated outcome is achieved, people consider the procedure through which it was achieved secondary (Skitka and Houston, 2001; Skitka and Mullen, 2002). It seems that moral mandates, or at least moral values, play a more important role in justice judgements than recognised up till now.

The rationale for the importance of absence of bias and prejudice

Procedural justice theory argues that neutrality matters to people because when one's case is dealt with objectively this confirms one's status in the group. It shows that one is worthy of being treated by means of a fair procedure and thus a respected member of one's social group. I looked into the concerns of those complaining about the presence of bias or prejudice to find out exactly *why* they were concerned about it. It was not possible to deduct these concerns for each interviewee, but

[37] M. Dutroux was arrested in Belgium in the summer of 1996 for the kidnapping and sexual abuse of six young girls and the murder of four of them. His crimes caused a major shockwave among Belgian citizens. In October 1996, 300 000 Belgians marched through Brussels to demand reforms in the police force and the criminal justice system.

overall I found that offenders worried about either (1) a short term outcome, (2) a long term outcome (*i.e.* the judge's verdict and the sentence) or (3) group standing. As for victims, I found their concern with bias to be their own physical safety and thus their well-being.

Heuer *et al.* in a 2002 paper drew attention to the meaning of the variables standing, trust and neutrality to argue that people involved in criminal proceedings care for these matters not only because the degree to which authorities respect these elements conveys a message about their position in the social group to which they belong but also because it conveys a message about the likelihood that they will obtain preferred outcomes. When people are confronted with for example a lack of neutrality on behalf of authorities, they deduct that their chances of receiving a desired outcome are low. The authors argue that procedural justice theorists have underestimated the significance of other than social standing concerns in explaining the importance of standing, trust and neutrality. The current study confirms this stance, at least for offenders. Some were concerned with the lack of neutrality because of its influence on a short-term outcome (e.g. "I was put in an uncomfortable cell as opposed to my accomplices"); others were concerned about a long-term outcome (e.g. "Because of their lack of neutrality I was forced to make a false confession"). Others worried about the lack of neutrality not because of an instrumental reason but because of the effect of being treated like that on their self-esteem ("They treated me as if I am a seasoned criminal", "They called me a liar"). Victims' concerns were exclusively related to security (bias; example of the victim who thought the police were protecting her assailant) and maintenance of self-esteem (prejudice; examples of the victim being treated like anyone else despite his race and of the victim who was not blamed for the offence despite her role in it).

The relationship between police prejudice and trust in the police

A number of recidivist offenders causally related 'having a criminal record' with 'a lack of effort in investigating the case'. They were convinced that the police did not/would not investigate their case well because they had a recidivist on whom to put all the blame. This finding suggests that a relationship exists between perceptions of police prejudice and trust in the police. When enquiring into the reason *why* offenders have such difficulty with this form of lack of neutrality one finds that the reason is that the lack of effort on behalf of the police to investigate the case to the bottom prevents the truth about the facts and thus about the offender's true role in the conflict to come out. In other words, instrumental concerns play a role, not just group belonging needs. In this the study confirms Heuer *et al.* (2002), who questioned the construct validity of the concepts standing, trust and neutrality to in fact empirically show that these variables influence justice judgements not only because of relational motives but also because of resource motives. Being treated in a respectful and

neutral manner conveys a message about the likelihood of obtaining desired outcomes. I too found that the lack of police neutrality perceived by these (recidivist) offenders did not so much disturb them for reasons of self-esteem or group belongingness but because of concern for outcomes.

§2.2. Fact-based decision making

§2.2.1. Description of results

The analysis of the interviews with respect to the element 'fact-based decision making' was complicated by the confusion between the concepts 'fact-based decision making' and 'decision accuracy'. Both have been used in justice research, and they seem to have been used interchangeably. The first concept figured in Tyler and Lind's (1992) model of procedural justice and was meant to imply that judicial decisions should be based on facts, not opinions. The second concept is the one that was used by Lind and Tyler in their 1988 book and defined by the authors as "the frequency with which each procedure convicts the guilty and issues: (1) that the guilty are convicted acquits the innocent" (p. 19). Tyler (1990) in order to assess the importance of the element 'accuracy of decision-making' asked the respondents participating in the Chicago study whether the authorities had gathered all the information needed in order to make a good decision and whether they had brought all this information into the open. He, then, used the concept 'decision accuracy' in the way Leventhal (1980: 41) did: this author's 'accuracy rule' meant to imply that procedures should be based "on as much good information and informed opinion as possible (…) with a minimum of error". In other words, the concepts 'decision accuracy' and 'fact-based decision making' point at three essential and the innocent acquitted, (2) that all information is gathered necessary to make an informed decision and (3) that decisions are based on facts, not opinions.

I decided that all fragments relating to the first issue should be described when I compare the results of this study to the value protection model's assertions in chapter seven, because in the description of the first issue one recognises the value protection model's assertions. Furthermore, I decided to include all interview fragments in which respondents talked about the influence of personal opinions on decisions under the category 'absence of bias or prejudice'. This means that below I describe (only) what participants said about the importance of information-gathering.

In victim interviews three fragments relating explicitly to fact-based decision making were found. One victim felt that the police or the prosecution should **gather more information about the victim** than they currently do. He suggested the police should pay an extra visit to victims in order to check if the damages that the victim described are indeed present or are being exaggerated. This would have to result in a report that would be handed to the judge. The second victim is the one who said that if the police had treated her disrespectfully she probably would not have told them

her story in full detail. The third person talked about **the thoroughness of police investigations**, stating that more information would be gathered if more reconstructions of offences were organised.

One recurring remark in offender interviews that fits this category was the comment **that the police had not investigated the case sufficiently well** and had not done their best to uncover the truth about the facts. Five offenders complained about this. Recall the mother of one young offender who suggested that the police when dealing with young offenders should talk to the parents to get a more complete picture of the offender. Another offender, who was accused of battery of his stepson, thought it was not correct that the police had not talked to the boy's mother. He too deemed that the police had not gathered sufficient information to get a complete picture of the situation. One offender was angry because the police had not been selective in confiscating his goods: they had taken quite some goods that he had bought honestly. Finally, I mention the two offenders who thought the police investigation had been superficial because of their criminal records.

As for reactions to perceptions of an investigation perceived as bad, the mother of the young offender who had changed his statement under the influence of the police officers interrogating him said that she had been thinking about sending her son to the actual offender with a tape recorder to have the truth on tape, because the actual offender had admitted to her son that he did not tell the police the truth. She was devastated that this kind of evidence would not be allowed in court, because that would mean that "those who should know *(the judge)* will never know".

"De dag nadien zegt hij tegen X. *(de respondent)*, 'ah nee, dat heb ik gelogen en dat en dat, je denkt toch niet dat ik dat allemaal ga zeggen'. Zoiets had ik graag gehad – maar dat mogen wij niet gebruiken he – als je dat opneemt. Daar hebben wij over gepraat he, we gaan iets zoeken en je rijdt daarmee naar Y. *(medeverdachte, eigenlijke schuldige)* en laat hem dat nog eens vertellen. Maar je mag het niet gebruiken he." ((Mother of) male offender, intentional assault and battery (respondent 26), participant)

The **active participation** wishes of offenders described above – the offender who added an extra letter to her statement explaining what made her commit the offence and the mother of an offender who felt a great need to be able to talk to the police officer handling her son's case – should also be mentioned in this section: as described above, these people were acting in the interest of fact-finding.

§2.2.2. Discussion

Equity theory

Several offenders complained about the police investigation remaining too superficial. Two of them thought the reason for this was that they are recidivists and the police just assume that they are guilty of the accusations, but they feel that they too have a right to a thorough investigation. There is a

parallel here with equity theory. Recall that people experience inequity when they feel that they are over- or under-rewarded by an exchange, and then try to alleviate the inequity distress they experience. Though of course a criminal investigation is not the same as an exchange process, there are two opposing parties and these may feel over- or under-rewarded not only by the judge's decision but also by the efforts the authorities do to clarify each party's role in the conflict. It is therefore amenable that the offenders discussed here experienced inequity and thus inequity distress.

Adams reasoned that people will in such cases use means for restoring equity. They can restore "actual equity", that is, alter their own outcomes or inputs or those of others, or restore "psychological equity", which is done by cognitively distorting their perceptions of their own and others' outcomes and inputs (Walster *et al.*, 1976). As for the recidivist offenders who complained about the investigation, one of the two resigned to the situation, but the other one actively started collecting evidence to make sure the truth about the offence would come out. Likewise, the mother of one offender who said that the police had not in the least tried to see things from his perspective had reacted by going to the police and demand that they would listen to her story, whereas the mother of the offender who had been confronted with a police officer urging him to adapt his statement to the advantage of an accomplice was on the verge of sending her son to the actual offender with a tape recorder. All these cases have been described above when discussing offenders' need for active participation, and point to efforts for restoring actual equity.

§2.3. Honesty

§2.3.1. Description of results

In victim interviews, nothing was found that related to honesty on behalf of the police, other than the fragments described under 'absence of bias or prejudice'. Three offenders complained that the police had **twisted their words** when writing up their statement or had written falsehoods. Victims had no complaints relating to the wording or the contents of their statements.

"(…) de mogelijkheden van een pv op te stellen, hoe gaan we daar het maximum uithalen. Ongelooflijk. (…) De woorden die zodanig op papier worden geformuleerd dat die in hun voordeel of in hun… (…) we kunnen op die papieren bijschrijven dat dat was, wat niet was, je kunt jezelf achteraf gaan verdedigen… da's niet waar, de politie wordt geloofd." (Male offender, intentional assault and battery (respondent 54), non-participant)

"En dan moest die verklaring vallen en toen waren die ook heel sterk en drukkend. In mijn verklaring staan ook woorden die ik nooit gebruikt heb. Er staat bijvoorbeeld 'toen heb ik uitgehaald'. Hoor je dat een meisje van 19 zeggen? Maar ik heb dat wel ondertekend dus ik kan daar niks meer aan veranderen. Die avond, dat was echt… redelijk hectisch." (Female offender, intentional and unintentional assault and battery (respondent 46), participant)

One offender had the impression that sometimes lawyers make arrangements with the police in order for cases not to be prosecuted. This is an example of perceptions of **unethical behaviour**.

"En de advocaten ondereen he. Misschien kennen die iemand via via. En dat ze dat regelen via de politie, dat ze dat in de onderste schuif steken he." (Male offender, intentional assault and battery (respondent 7), non-participant)

§2.3.2. Discussion

Not many references to a lack of honesty were found in the interviews. The examples mentioned above relating to honesty concern, first, the specific wording of offenders' words in the minutes of interrogations and, second, the belief that deals are made between the police and lawyers.

Writing the statement

As for the first issue, Malsch *et al.*'s (2010) research on perceptions of procedural justice as they result from how police officers write statements shows that the exact wording of the minutes of interrogations may have farfetched consequences. Students were asked to rate three different versions of minutes of the same interrogation as to the plausibility of the offender's story and the quality (in terms of procedural justice) of the interrogation. The first version presented the alleged offender's story as a monologue, as if she had told a fluent story; all interviewer questions and probes had been omitted. The second version contained the offender's story written down in a pragmatic way, adding a number of questions in order to draw attention to certain points and omitting information that the officer writing the minutes considered irrelevant. The third version contained the offender's story in her own words and included some non-verbal utterances and pauses.

The third version of the minutes was rated the least plausible: the more comprehensive the minutes, the more often students thought the offender was guilty. The interrogation was rated the most procedurally just when it was written down as a monologue. This version gives the impression that the offender got the time to do her story and that the interrogator was impartial. Yet of course, as all interviewer probes and questions are omitted from the minutes this may be a false impression.

The authors conclude that some ways of writing down the minutes of an interrogation may lead to false interpretations and incorrect conclusions about the guilt of an alleged offender. Interrogators decide which elements to omit, which to stress, how to formulate the offender's words. They may write the minutes so as to conceal that the statements of the offender were in fact induced by the interrogator, omitting the questions that suggest that the offender has been pressured. All this may happen unwittingly, but it has great consequences as, as Malsch *et al.* (2008: 2579) wrote, "the contributions of the interrogators are invisible to the decision maker" (my translation from Dutch).

One could object that no one can be forced to sign minutes about which they are dissatisfied; yet I found that the stress that comes with a police interrogation may lead people to hastily sign the minutes of their interrogation. Also, one respondent said: "the police are always right, so you sign it".

The problem of police officers twisting offenders' words in their statements is especially relevant to civil law countries, such as Belgium, as these countries' criminal procedures are based almost exclusively on documents. The prominence of juries in the common law tradition resulted in trials based on oral presentations of evidence, whereas civil law proceedings are based on written communication (Merryman and Pérez-Perdomo, 2007). Victims', offenders' and witnesses' statements are usually not reproduced in court, nor are experts frequently invited to attend the trial. The judge's decision about the alleged offender's guilt and about the sentence is based to a large extent on the documents that were produced by the police and these experts; court meetings as a rule do not take much time. As such great importance is attached to documents produced by the police, it is essential that these documents reflect the truth accurately (Malsch *et al.*, 2010).

Unethical behaviour

The second example, about the deals that are made between lawyers and police officers, relates to ethical behaviour. It relates also to the value protection model's conviction that people ought to bear the consequences of their acts, because what the participant is denouncing here is that deals between lawyers and police officers can lead to offenders escaping punishment. The connection between ethical behaviour and the moral mandate hypothesis is not farfetched considering that ethicality was described by Leventhal (1980: 46) as being based on "the assumption that judgments of fairness and justice are related to (…) moral and ethical values and standards", and considering that he wrote that violations of those values and standards could lead to perceptions of unfairness. If people have the perception that some people escape punishment because of arrangements between the police and lawyers, this may seriously affect their sense of fairness. Note that 'ethicality' was one of the factors considered by Tyler in his 1990 study, but gradually disappeared from the scene until the value protection model again called for attention to the role of moral values and standards.

§3. Performance

§3.1. Description of results

The third theme that emerged from the analysis of both the victim interviews and the offender interviews was not advanced by Tyler and Lind (1992). It was labelled 'performance'. The interviewees when talking about how they experienced the police intervention mentioned quite some aspects pertaining to their perceptions of the way the police functions and the quality of its work.

Mark that to label police performance as a category is not without foundation: the International Crime Victim Survey (2004/5) for example contains a police performance index (van Dijk *et al.*, 2007), though because the ICVS is a self-report study among citizens, the emphasis there is on police performance in controlling crime. This is not what the respondents to the current study talked about; their concerns related to their case specifically.

An important issue to seven victims was **whether the police caught the offender**. Some said that the fact that the offender(s) had been arrested was "a relief" because it added to their safety and thus their well-being; others said that it was "pleasant to know" that the offender(s) had been arrested. To others, the aspect of the police catching or not the offender had a deeper meaning. First, one victim said that the police apprehending the offenders is a form of victim recognition. Second, there seemed to be a clear relation at least for some of the victims between whether the police caught the offender and their satisfaction with the police. One participant for example to the question "How was the contact with the police?" replied "Very good, because they caught the offender". Another participant indicated that if the police had not found the offenders, his opinion about the police would surely have changed.

"Maar het gedacht kan zo rap veranderen he. Hadden we die daders nu niet gevonden, ja, dan had ik weer een ander gedacht van de politie. Nu is dat goed afgelopen, toeval, geluk, we hebben ze gevat en dus zeg je ja, kom. Maar anders zou ik daarop zitten vitten hebben, van 'ze moesten maar van een straat verder komen, als ze nu wat rapper waren geweest'." (Male victim of intentional assault and battery (respondent 12), non-participant)

"Dat is een stuk erkenning. Zo'n beetje van, ze hebben die dieven ook gepakt, dat is een erkenning." (Female victim of burglary and theft (respondent 52), non-participant)

Two victims were very disappointed about the fact that **the police had not immediately apprehended the offender after they had reported the crime**, even though the offender's identity was clear and the victim could provide the police with the offender's name and address. One of them said that the delay had given her the feeling that the police did not take the case seriously. Whereas to the other victim the fact that the police had not arrested the offender the night of the crime was not an all-determining point (globally he was satisfied with the police's performance), this respondent's opinion of the police was completely determined by this fact (she was very negative about them). It should be mentioned that the first victim received an explanation from the police as to the reason why they could not apprehend the offender immediately, whereas the second victim had not, pointing again to the importance of receiving information.

"V: En hoe heb je dat contact ervaren? Wat heb je daarbij gedacht of was er iets wat je daar opmerkelijk aan vond?
R: Ja, dat ze niet achter de dader gegaan zijn. (…) We hebben het adres en al gegeven maar niks. Zelfs naar het café zelf zijn ze niet meer geweest om mensen te ondervragen of zo. (…)
V: Wat voor indruk geeft u dat?
R: Dat het maar gewoon is van och, het is weer onder jongeren, en laat maar zo." (Mother of male victim of intentional assault and battery (respondent 20), non-participant)

As all the victims participating in this study were contacted through a mediation service, their offenders had all been caught. For this reason, it is not possible to say anything definitive about the impact of whether the offender has been caught on victims' evaluations of the police.

Four victims discussed **whether the police had according to them done all they could** to find the offender. Some accused the police of a lack of effort to find the offender. One example is that of a young victim's mother who told that her husband and son had gone to report the offence at night, as it had happened at night, and had gotten the impression that the police did not feel like taking much action exactly because it was night-time. This had seriously affected her trust in them. A second example is that of an employer who suspected one of his employees of stealing money. He too had expected the police to take more effort to find out who exactly was the thief. In the end, he had successfully managed to identify the thief, yet as he said, *he* had solved it, not the police. On the other hand, he showed some understanding for the police's lack of effort in this matter.

"Maar wel zo van, het is hier vrijdagnacht, allez, zaterdagmorgen, en we hebben geen goesting om eens buiten te gaan. Mijn man zei, het was zo precies tegen hun zin, van, het is hier nacht, en zo van pff. We hebben geen zin om tot daar te rijden. (…) Als ze daar al tegen zeggen, goh, het interesseert ons niet (…) ja, dan heb je geen vertrouwen in de politie." (Mother of male victim of intentional assault and battery (respondent 20), non-participant)

"Misschien dat ik wel even dacht dat de politie zelfs iets meer zou ondernemen om de dief op het spoor te komen of zo. Maar ja, ik zie ook wel in waarom (…). Het gaat eigenlijk over heel kleine bedragen, als je alleen al de kost van zoiets zou zien, het aantal uren dat wij erin hebben gestoken, als de politie dat zou doen, dat is eigenlijk heel goed te snappen en verantwoordbaar dat dat niet kan." (Male victim of theft (respondent 37), non-participant)

Seven victims when discussing the police intervention brought up **police response times**, that is, the time that it had taken for the police to arrive at the crime scene. This seems a very sensitive issue. One reason for this is that when it takes a long time for the police to arrive to the crime scene, this conveys a message of nonchalance and indifference: "as if it is okay to just let the offenders get away with it". One victim took into account the distance between the police station and the crime scene; he reasoned that as the police station was "just a few hundred meters away", it had taken the police

too long to turn up. Victims when discussing the time it took for the police to arrive at the crime scene generally talked in terms of "too slow" or "quick"; only two of them were more specific, indicating that it took e.g. a quarter of an hour for the police to arrive.

"V: Zijn er dingen geweest aan dat politieoptreden die je opmerkelijk vond – zowel positief als negatief?
R: Ja positief dat ze rap ter plaatse waren." (Male victim of intentional assault and battery (respondent 21), participant)

"V: En op welke manier is daar dan de politie bijgekomen?
R1: Ja, dat was ook nogal een grap.
R2: Na een hele lange tijd." (Female and male victim of intentional assault and battery, threats and vandalism (respondents 44 and 45), non-participants)

Five victims during the interviews made a remark about the **length of the police intervention or the interrogation**. For two of them the fact that the police had taken ample time to deal with their case was an indicator that they were taking it seriously, but the others seemingly mentioned it heedlessly, without paying further attention to it or expressing a judgement about it. Those who said that the intervention had not taken very long were not dissatisfied about this.

"Maar voor de rest… dat heeft eigenlijk ook niet lang geduurd. Die hebben een klein verslagje opgemaakt, en dan achteraf gezegd dat het een paar dagen ging duren voor ze mij terug gingen oproepen voor een volledige ondervraging. Voor de rest, dat was een korte periode dat die hier zijn geweest." (Male victim of intentional assault and battery (respondent 21), participant)

Three victims said that the police **had called a service that was actually closed or a police officer who had already left home**. This was seen as an indicator that they were taking the case seriously.

"Ik ben met de oudste naar de politie gegaan, en die hebben dat vrij ernstig genomen. Ze hebben die avond nog gebeld met de Jeugdbrigade in (stad), terwijl die eigenlijk enkel overdag open zijn." (Father of male victims of intentional assault and battery (respondent 6), non-participant)

Negative remarks with respect to the quality of the police's work concern, first, the police's **knowledge of particular cases**. Two victims complained about this. One (the mother of a victim) talked about how the police had called her boyfriend's (the offender) cell phone and she was surprised to learn that they were not aware that he was in prison. The other one said that the police had never suggested the possibility of bundling all the complaints that she had been filing about her

stalker; only after she found out about this possibility from a victim support worker she had asked them to do this. This very same victim complained that her **file had been an absolute mess** until she received some support from a victim support worker. To cap it all, the police officers, on her request to provide her with the identification numbers of her complaints, which she had to deliver to the public prosecution service, had managed **to provide her with the wrong numbers**.

"De politie heeft Y. *(de verdachte, de partner van de respondent)* gebeld, en ik heb zijn gsm om te zien of hij geen gemiste oproepen of zo heeft, en ik zag dat de politie gebeld had. En ik heb dan zelf teruggebeld om te zeggen, Y. zit in hechtenis – nog zoiets waarvan ik dacht, dat de politie dat zelf niet weet?" (Mother of male victim of intentional assault and battery (respondent 30), participant)

"Op den duur, ik heb veel papieren, maar…. (…). Nu is dat aan het beteren, met (de bemiddelaar) en de vrouw van slachtofferhulp, maar in het begin is dat pure chaos. Ik ga klacht neerleggen, ik heb een pv, ik ga klacht neerleggen, ik heb een pv, maar voor de rest, niks. (…) Mijn pv's zijn hier afgelegd of in (stad) of in (stad), er moet toch een databank zijn waar dat allemaal gecentraliseerd is? En dat is totaal niet waar. Heel dat dossier is zo'n chaos dat ik het zelf niet meer weet. (…) Als er dan bijvoorbeeld wordt gevraagd om uw pv-nummers door te sturen, ik stuur die door naar het parket, dan blijken die nummers niet juist te zijn, die ik gekregen heb van de politie. En dat is zo constant… dat je op den duur zegt, ik weet het ook niet meer, of dat je begint op te geven." (Female victim of stalking (respondent 18), non-participant)

A second negative remark concerns the **cooperation between different police services**; there were two participants (victims in the same case) that complained about the cooperation between the police services of two different districts. Third, three victims mentioned **mistakes on behalf of the police during the investigation of the case**. For example, an employer who suspected his employee of stealing money from the cash register had asked the police to come to catch her in the act. Yet the police had come an hour early and had parked their car right in front of the entrance of the shop. As the participant said, he had been very lucky that the employee had not noticed the car. Another example is that of two victims of burglary (same case) who had suggested to the police to trace their stolen computers. The police had told them that that was not possible because they did not have any specialists capable of conducting such an investigation.

So far I have discussed victims' opinions about police performance only. When offenders talk about the police intervention, they tend to come up with **the number of police officers that were sent to intervene**. Two men talked about the "great show of force" that had been displayed when arresting them and that in their opinion was disproportional to the offence. One said that such a great show of police force is like a red rag to a bull: it elicits aggressive behaviour from offenders.

"Ik vond dat echt zo van, dat is er net over. Het was een beetje te. En dan ook met twee combi's en een nest flikken, ik dacht hé, die hebben niemand kapot gemaakt zenne. Dat vond ik echt overdreven." ((Mother of) male offender, burglary and theft (respondent 43), participant)

Staying with the topic of the police and use of power, two offenders accused the police for **using its power to keep them in detention for as long as possible.**[38]

"Ik heb wel vastgezeten, en dat was wel redelijk lang eigenlijk. Twee dagen, tot het uiterste van het uiterste, tot ze niet anders meer konden. En dan hebben ze mij naar de onderzoeksrechter gebracht, dat had om negen uur 's morgen gekund maar dat hebben ze pas om vier uur in de namiddag gedaan. Dus dat is wel minder tof he." (Male offender, partner violence (respondent 17), participant)

"V: Heb je in een cel gezeten?
R: Ja. 24 uur. De politie heeft er het maximum uitgehaald. We moeten die hebben en we gaan die hebben." (Male offender, intentional assault and battery (respondent 54), non-participant)

Another thing that offenders spoke about is **the thoroughness with which the police conducted the investigation**. As this was discussed above it is only mentioned at this point. Another issue that offenders discussed is the police's **methods of interrogation**. Two offenders expressed disdain about the so-called 'good cop bad cop' tactic, indicating that it did not at all work on them. Recall that several participants said that they are more willing to cooperate with the police when the police treat them respectfully. Apparently, this effect disappears when a respectful officer is accompanied by a discourteous one, all the more as, as said above, friendly officers are not always considered genuine. Another offender recalled that the police officer had asked him to choose between two methods of reporting about the interrogation: one option was that they would note every move he would make during the interrogation, yet they immediately added that if he opted for this method, "he would be stuck in there for several hours".

"En dan het verhoor 's anderendaags, vond ik goed en niet goed eigenlijk. Ze zitten daar met twee, eentje waar je eens mee kunt praten, en dan een andere die afketst, een dwazerik. Dat is zo naar 't schijnt, een goede en een slechte." (Male offender, violent theft and threat of arson (respondent 24), non-participant)

[38] In Belgium, in line with art. 5.3 of the European Convention on Human Rights, the police cannot detain a suspect for more than 24 hours; after 24 hours an investigating judge needs to decide whether the suspect should be released or should be held in custody (for maximum five days). Before the end of the five-day term an investigating court should decide whether the suspect should remain in custody. Each month, this decision is revised. See art. 2, 21 and 22 wet 20 juli 1990 betreffende de voorlopige hechtenis, *B.S.* 14 augustus 1990.

One other offender had trouble with the two-way mirror in the interrogation room; the awareness that they were watching him caused him to feel restless. He also mentioned the technique of leaving him waiting in the interrogation room for half an hour, coming back, leaving again, and so on. He said that all this had been "a little too much" for him. A fifth offender remembered that the police had asked every question "in five different contexts", as if to set a trap.

Finally, offenders too talked about **police response times**, yet in another way than victims: two of them mentioned that months had passed between the offence and the moment the police had contacted them. Another one indicated that an hour and a half had passed between the moment the police had called him to ask where he was – in order to be able to arrest him – and the moment they actually arrived there, and made fun of that because they had actually given him ample time to flee.

"Ze zeiden, 'waar ben je dan nou'? Ik zeg 'ik sta in (stad), waarom'? Ze zeiden dat ik zou worden uitgeleverd aan (land), ik zei 'goed, kom me maar ophalen'. Dan heb ik anderhalf uur moeten wachten, verder ook geen tijd om te vluchten weet je wel." (Male offender, robbery (respondent 27), non-participant)

§3.2. Discussion

An extra yet indirect determinant of procedural justice

Above I reported the results with respect to participants' perceptions of the way the police functions and the quality of its work. Many aspects relating to this topic came to the fore throughout the interviews when participants were asked for their opinion on the police intervention, such as: Did the police put a lot of effort in catching the offender? Did they conduct a thorough investigation? How much time did it take for them to arrive at the crime scene? These are aspects determining victims' and offenders' satisfaction about the police that have so far not figured in procedural justice literature. One could argue that the reason is that procedural justice literature looks at perceptions of fairness, and that the determinants of satisfaction are broader than the antecedents of fairness. Police performance, then, one could argue, may be a determinant of satisfaction with the police, but not necessarily relates to perceptions of fairness. Yet as I tried to disentangle why exactly participants were concerned about these aspects of police work, I observed that there are clear links with the procedural justice concepts of standing and trust. In fact, it appears that the performance issues mentioned influence perceptions of standing (victims) or neutrality (offenders) and as such influence perceptions of fairness in an indirect manner. I will discuss victims and offenders separately.

Victims When disentangling why it is that performance issues are considered important by victims, I found that the degree to which the police do all they can to find the offender, conduct a good investigation, and so on, communicates about standing, *i.e.* about the degree to which they take the case seriously. This was mentioned by victims when discussing whether the offender was caught,

when mentioning that a service that was closed was nonetheless called, when talking about the police's response time and about the length of the police intervention. If the police put effort in the case this to victims means that it is taken seriously, which in turn conveys a feeling of acknowledgement. A similar line of reasoning was found with victims participating in Aertsen and Hutsebaut's (2010) study. Bradford *et al.* (2009) too found that being taken seriously has a significant impact on victims' rating of police effectiveness, and that 'waiting time' for example is an important issue to victims because it is used as a measure of police responsiveness and of the importance the police place on demands from the community.

In terms of justice research, being taken seriously is a relational concern. In other words, victims are not just worried about e.g. the police catching the offender out of retribution; the knowledge that the offender is apprehended for them is an indication that the police are taking their case seriously and thus of victim acknowledgement. The degree to which the police do everything within their power to find the offender and uncover the truth or to organise the victim's file to make the case progress also influences trust in the police.

Offenders Offenders' main concerns were with the methods of interrogation that were used by the police, with the great show of force by the police when arresting them, with the thoroughness of the investigation and with the police using its power to keep them in detention for as long as was legally possible. All these relate to elements of neutrality. The improper use of power during interrogations, upon arrest and during detention points to the police behaving in a dishonest way; the police (not) investigating the case well is associated with prejudice and, obviously, fact-finding.

SECTION II. THE INVESTIGATORY PHASE OF THE CRIMINAL PROCEEDINGS

Introduction

During the first wave interviews respondents were asked not only about their experience with the police but also with the criminal justice system, yet most of them had never had any personal contact with the criminal authorities. Only the offenders who had been brought before an investigating judge had actually met a magistrate. The factors that were found to influence perceptions of procedural fairness again related to standing (§1), neutrality (§2) and performance (§3).

§1. Standing

Standing was operationalised in the same way as it was for people's encounters with the police. I will discuss elements pertaining to (1) dignity, politeness, (2) respect for rights and (3) concern for needs.

§1.1. Dignity, politeness

§1.1.1. Description of results

One parallel with their evaluations of the police is that victims when talking about this phase of the proceedings also advanced elements of **acknowledgement of victim status**. A victim of stalking said that the fact that all her complaints had been dismissed by the public prosecutor made her feel like she was on her own and they did not take the facts seriously. Another victim explained that the language and terminology used by the prosecutor in letters confirmed her victim status:

"Op elke brief die ik kreeg van de procureur stond dan naar aanleiding van de feiten en omwille van het feit dat het onder bedreiging was van wapens en het dus ernstiger is… En dat maakt ook dat je u een stukje gehoord voelt." (Female victim of robbery (respondent 47), participant)

Two victims complained about **impersonal treatment** by the criminal justice system. One of them said that he felt like a number; this was because during the criminal proceedings, so he said, virtually no attention is paid to victims. He felt completely neglected. Another victim compared the contacts she had had with the criminal justice system with the contact she had had with the police, rating the second as much more personal. Whereas the police, so she said, had always come by personally to hand over a letter or to invite her for an interrogation, the prosecutor's office contacted her through letters sent by mail. The reason why she felt dissatisfied with this was that when police officers had come by, they always immediately explained to her why a new encounter was necessary. On the contrary, when she had read the letter from the prosecutor's office asking her to come for an

interrogation, she did not know why exactly she was invited and there was no one to tell her, which had caused distress. Information, then, again seems to be an important factor for preventing victim distress. The fact that letters are sent by mail instead of being delivered in person also conveys a different message about the degree to which the authorities genuinely care for the victim.

"Op een bepaald moment hebben we dan eens een uitnodiging gekregen voor een verhoor door het jeugdparket. (…) normaal gezien, ieder contact, of als ze zeiden dat we eens moesten komen voor een verhoor, of ze kwamen een brief afgeven, dan was dat heel persoonlijk van 'je moet nog eens langskomen, we hebben gewoon nog een paar kleine vragen, je moet je geen zorgen maken'. Maar nu was dat per brief (…) en dan moesten we weer allebei voor een verhoor gaan, op een verschillend tijdstip, dus we dachten ja, wat is er nu weer gaande?" (Mother of female victim of sexual abuse (respondent 50), participant)

Another point is the **attitude of magistrates**[39]. References to magistrates' attitudes were found only in interviews with offenders who had been brought before an investigating judge or had participated in victim-offender mediation organised by the public prosecutor's office (so-called penal mediation).

The only offender who had participated in penal mediation said that they had been very harsh on her, pushing her, but also the other party, until one of them would own up and confess. She said that they had been very severe and frank in speech. Likewise, three of the four offenders talking about their encounter with the investigating judge were negative about this person's attitude, describing it as strict, firm, angry, brutish and rude. One of the offenders said that if the judge wants people to cooperate, he should not behave like this as a suchlike attitude does not compel respect. Another thought he had been treated unfairly by the investigating judge's fierce attitude because he had only committed a very minor offence; he did not deserve to be treated so badly.

"Ja, die begon eigenlijk al toen ik binnenkwam een beetje te schelden en zo van lafaard en dit en dat. Ik heb eigenlijk mijn verhaal ook niet mogen doen. Ik kon daar eigenlijk bijna geen woord tussenkrijgen. Ik mocht mijn verhaal wel doen natuurlijk maar… (…) hij zei 'je moet niet zeveren, je bent een lafaard'. Ik vroeg dan wat gaat er nu gebeuren en hij antwoordde dan 'ge vliegt samen met uw vrienden in den bak' en keihard roepen en zo." (Male offender, violent robbery (respondent 48), participant)

An often mentioned **consequence** of the investigating judge's tough and severe attitude was that the offenders **did not dare to speak much** during the encounter, afraid as they were that anything they

[39] Respondents were not explicitly asked about the behaviour and attitude of administrative staff. Overall only two respondents spoke about contact with administrative staff of their own account. They had had contact with administrative staff when collecting a copy of the judgement, but did not discuss these people's attitude.

said would increase the chance that the judge would decide to keep them in detention. One person made a similar remark with respect to the judge that he had encountered in the investigating court.

"Dat is zoals ik toen in de rechtbank zat, ik moest dan binnen voor de rechter, en dat begon al van 'hoe komt het dat je dit en dat gedaan hebt, en je hebt nog al eens een diefstal gepleegd, zou ik u wel vrijlaten' (…). Ik durfde al niks meer zeggen natuurlijk, omdat ik mijn vrijlating moest krijgen, en dan durf ik daar niet goed meer tegenin gaan." (Male offender, theft (respondent 40), non-participant)

Two respondents (a victim's mother and offender in the same case; a couple) perceived a relation between the attitude of the judge and the criminal history of the suspect. Both expected that the judge would be unfriendly towards the offender because of his criminal history. Another respondent said that judges do not realise that their words have a great impact on those they speak to. He said that they do not understand how it feels to be tried and how important it is to be treated decently.

"Een rechter moet eigenlijk zelf eens beoordeeld worden door een andere rechter. (…) Dan gaat die ook begrijpen wat dat eigenlijk is als je daarvoor staat. (…) Die weten niet hoe het voelt volgens mij, om daar zelf te staan. Omdat zij hun job doen en die weten gewoon niet anders." (Male offender, theft (respondent 40), non-participant)

In general, the respondents perceived of magistrates as cold and stiff people. Also, they are perceived to distance themselves from 'ordinary people' through clothing and use of jargon.

"Als je op een rechtbank terechtkomt dan merk je, die mensen daar kleden zich op een bepaalde manier, en heel de sfeer is erop gericht om hun job, hun status, hun machtsniveau in stand te houden." (Male offender, intentional assault and battery (respondent 36), participant)

In the description of results in this section I will each time refer to the comments that were given by participants on the **survey statements** that relate to each element. Four statements gauged the importance of being treated with respect by judges. These were: (1) "[it is important that] the judge will treat me with respect, friendly and politely", (2) "[it is important that] the judge will respect my dignity and will not say hurtful things", (3) "[it is important that] the judge will give me the feeling that he is taking me seriously" and (4) "[it is important that] the judge will not behave pretentiously or give me a feeling of inferiority".

One victim on the first of these four statements commented that judges should never be impolite. Nevertheless, they ought to clearly reprimand offenders using a firm voice whereas they should show understanding to victims and confirm that what they have been through was hurtful

and difficult. In other words, she differentiated between victims and offenders; this reminds of what was reported about the conditionality of being treated with respect by police officers earlier on in this dissertation. Overall, participants thought it is self-evident that judges treat litigants with respect. There were no significant differences between victims and offenders. Three participants with a previous experience with the courts, one as a victim and two as an offender, with respect to the second statement said that they had experienced judges being tactless during this previous experience and that this had impacted upon their self-esteem.

"Als je hoort wat die er allemaal uitrammelt, dan heb ik soms het gevoel van, is het nog wel nodig dat je nog tijd in mij steekt, want als ik dat zo hoor, er is aan mij niet veel goeds he." (Male offender, sexual abuse (respondent 53), participant)

"Als je daar buitenkomt ga je direct ene drinken. Het is dat van 'ik tel niet meer mee, ik heb gefaald, ik heb dingen gedaan die niet konden'. En dan is het heel moeilijk om nog overeind te blijven in het leven. Sinds die gebeurtenissen heb ik het heel moeilijk om mijn werk goed vol te houden." (Female offender, burglary and theft (respondent 4), non-participant)

To the third statement one offender replied that if this requirement is not satisfied, he would not dare say anything. Another one said that judges can easily give people the *feeling* that they are taking them seriously but said that he does not believe that they actually do so. The fourth statement elicited comments from victims especially; they said that judges are people like anyone else and therefore have no right to act in a superior way. They should be "people of flesh and blood"; one participant said "that it would be a literal sign of coming closer to people if they would not be sitting on a raised bench". However one participant thought that if courts would eliminate all physical signs of their superiority, such as the robes, they would lose their value. These signs according to this person are necessary in order to illustrate that a courtroom is not a place for chitchat but for serious matters. I come back to this in the part on courtroom organisation in the next chapter.

§1.1.2. Discussion

Communicating acknowledgement to victims in an impersonal setting

I started the description of the results pertaining to dignity and politeness with victims' wishes for acknowledgement. The results show, first, that there is a way for magistrates, who seldom personally meet victims, to still convey a message of acknowledgement to victims, *i.e.* through the language they use in their letters. They show, second, that a lack of recognition may not only follow from poor treatment of victims by authorities but also from a lack of follow-up of victims' complaints. This

finding is similar to the finding reported above that victims derive acknowledgement from the police arresting the offender. Both findings can be related to the value protection model's stance that people have a great need for those guilty of offences to be censured. It could be that the non-fulfilment of this moral mandate prevents the development of feelings of acknowledgement.

A moral mandate on procedure

Offenders who had had contact with investigating judges were extremely negative about these judges' attitude. One said that he did not *deserve* being treated so harshly. Here again one finds a relationship between standing and offence severity, and thus an indication of the existence of a moral mandate on procedure: the degree to which one is entitled to respectful treatment depends on the seriousness of the offence one has committed. The concept of deservingness has been touched upon by Heuer *et al.* (1999), who showed that people with high self-esteem attach more importance to being treated with respect than low self-esteem individuals. The current study adds to the study of deservingness of being treated with respect that in a criminal law context, offence severity too matters.

The relationship between being treated with respect and voice

An extremely important finding in view of the literature on procedural justice is the existence of a possible relationship between the quality of interpersonal treatment and voice. The offenders who had a negative experience with the investigating judge said that they did not dare to voice their opinion during the interrogation because they feared that if they would, the judge would decide to keep them in preliminary custody. An important conclusion is, then, that the procedural justice antecedents of receiving respect and voice may be related. A negative relationship with authorities prevents offenders from voicing their opinion. This reminds of the offender about whom I reported above that he could not muster up the courage to go back to the police to alter his statement because the police officers had treated him badly the first time.

To my knowledge, it has not yet been suggested that people may feel impeded to exert voice because of disrespectful treatment by authorities. Granted, procedural justice research has demonstrated that people become less cooperative to the degree that they find themselves disrespected by authorities, and when discussing the results about standing in the first section I noted the same. But the findings reported here confirm that there is a relationship not just between the quality of interpersonal treatment and willingness to participate in information-gathering but also between the quality of the interpersonal relationship and having the courage to defend oneself.

On the basis of the finding that some litigants refrain from voicing their opinion out of concern for the consequences of doing so I would like to toss the following thought. The process at work is that one feels treated impolitely, as a consequence of which one does not dare voicing one's opinion. The result of this then is that one feels treated unfairly. Might this intermediary step (*i.e.* experiencing a lack of voice) be necessary in order to activate the link between a lack of respect and unfair treatment? Murphy and Tyler (2008) and Tyler *et al.* (1996) have presented research on the elements that mediate the influence of procedural justice on compliant behaviour, but I have not found studies that explain the link between relational concerns and feelings of procedural (un)fairness other than by reference to self-interest or group standing. Possibly, the link between relational concerns and feelings of procedural (un)fairness is (also) mediated by the effect that a lack of respect or neutrality has on the degree to which one feels free to exert voice.

Obedience to the law

Above I reported about respondents who mentioned a relationship between how one is treated in court and the will and strength to conform to the law. This finding is worth extra investigation because it should tell us something about procedural justice theory's stance that people become less willing to respect the law when they experience procedural injustice. The respondents said that being treated patronisingly and disrespectfully in court lowers one's self-esteem, which is congruent with the group-value model's line of reasoning. Yet what one of the three said was not that being treated disrespectfully makes one less *willing* to conform to the law but that it makes it more *difficult* to do so; the loss of self-esteem makes it hard to take up one's life again. This observation may shed new light on the perspectives on obedience to the law: it is not just that people are not *willing* anymore to obey the law; possibly, their self-identity is hurt so badly that they do not find the strength anymore to find a job and take care of themselves, which may increase the chance of wrongdoing.

§1.2. Respect for rights

§1.2.1. Description of results

Above I explained that respect for rights consists of two categories: (1) actual breaches of the law by the authorities and (2) *perceived* breaches of rights. As for the first category, only in offender interviews complaints about a breach of a right were found. One was that **the subpoena deadline had not been respected**. This is a breach of art. 184 CCP, which prescribes that offenders should be informed of the date of the trial at least ten days in advance (three days when they are being held in preliminary custody).

"En toen kreeg ik die brief en daar stond dan in dat ik gedagvaard was, dat ik de week erna moest voorkomen. (…) in één keer uit het niets, geen tijd om nog iets in orde te brengen, ik heb mijn advocaat dan gebeld en ik zeg kijk, wat moet ik nu doen?" (Female offender, intentional and unintentional assault and battery (respondent 46), participant)

A second complaint was that of an offender who had arrived in court without a lawyer but **was prohibited to defend himself**. This is a violation of art. 6 (3) c of the European Convention on Human Rights, which declares that everyone charged with a criminal offence has the right to defend himself, whether this is in person or through legal assistance.

"Vorige week vrijdag ben ik plotsklaps opgeroepen om tegen mijn beroep van de verzekering te gaan, en ik wist van niks en mijn advocaat wist van niks en plots moest ik naar [de rechtbank van] (stad). Dus ik daar naartoe, 'u hebt geen advocaat?', ik zeg 'dat is goed, ik ga mezelf verdedigen'. Dat mocht niet. Ik zeg 'wat is dat nou voor onzin?' 'Neen, dat mag niet, daar doen wij hier niet aan'." (Male offender, robbery (respondent 27), non-participant)

Going to the second category, then, one victim complained that she had only been informed about the date of the trial two days in advance, but there are no legal provisions as to the time within which she should have been informed; art. 184 CCP applies only to offenders. Likewise, two offenders complained that they **had not been informed about the date of the trial in time**, yet in their cases the legal terms had been respected. The reason for their frustration was that the little time between the notice of the date of the trial and the actual trial prevented them from decently preparing their defence. One should keep in mind that one of these two offenders had already been informed by the mediator that he would be summoned and thus was somehow prepared. He was already aware that he would be summoned; he just had not yet received the letter. Frustration about this short time range may therefore be even greater in offenders who do not participate in mediation, as they are only informed about them being summoned when they actually receive the summons.

Throughout victim interviews one other example was found of a procedure that victims thought was unfair whereas in fact the procedural rules had been applied correctly. The father of two young victims did not agree with **the age limit set for children's opinions to be heard**. He supposed his children sufficiently mature to make decisions and be heard by the judge but they could not.

Examples of how an in se correct decision is regarded as unfair mentioned each by one or two offenders were: the fact that one has to **pay to receive a copy of the file** and the fact that the **case of an adult offender would be dealt with by the court in the absence of his underage accomplice**. Rules had each time been applied correctly but the result of their application was perceived as unjust. The most telling example is that of no less than ten offenders who said that they disagreed with the authorities' **decision to bring their case to court**. They had all committed an act

that is described as a crime by the Criminal Code; hence the authorities were perfectly entitled to prosecute them. But ten offenders disagreed, which is a remarkable number as all of them agreed to participate in mediation, a precondition for which is that the offender does not deny his involvement in the facts. The reasons they disagreed were one or more of the following: they had been involved in a fight and thus were victims too (N = 2), the victim had provoked the aggressive reaction (N = 4), they were not actually guilty (N = 1) and/or the facts were banal and rather harmless (N = 7).

"Ik dacht seg zo'n banaal feit. Als ik nu zijn neus had gebroken of op hem was blijven sjotten of zo, dan akkoord. (…) Voor wat daar gebeurd is, ik zeg het nog, snap ik niet dat een procureur zegt, we gaan daar een zaak van maken. Alsof ze niet genoeg werk hebben." (Male offender, intentional assault and battery (respondent 34), participant)

"Ze hebben de procedures allemaal wel correct gevolgd denk ik, maar terecht was het voor mij zeker niet om daar tien dagen vastgezeten te hebben." (Male offender, violent robbery (respondent 48), participant)

§1.2.2. Discussion

Incompatibilities between respect for rights and concern for needs

Above a number of examples were given of how people may feel unfairly treated by in se correct procedures. These illustrate the difference between objective procedural justice and subjective procedural justice *and* show that respect for rights may conflict with concern for needs. The fact that certain procedural rules must be respected may lead to perceptions of unfairness and prevent certain needs from being met. In Aertsen and Hutsebaut's (2010) study among parents of victims of traffic accidents a number of similar examples were found. For example, some could not muster understanding for the legally stipulated procedural restrictions on victims' right to look into the file. Some perceived the trouble that they had had to go through in order to be allowed to look into the dossier as a sanction. The same was said about the fact that victims need to pay for a copy of the dossier. Some said that it would be a sign of respect for one's victimhood to give them a free copy.

The relationship between procedural justice and distributive justice

The findings reported here shed more light on the question whether perceptions of procedural justice lead to perceptions of distributive justice (*i.e.* perceptions of outcome fairness). Take the example of the participant who said that he was aware that in fact all the procedures had been respected but that still the decision resulting from this procedure did not feel fair to him. Obviously, perceptions of procedural justice did not lead to perceptions of distributive justice. The relation between distributive justice and procedural justice has been fleshed out by several authors; the results of their studies were presented in chapter two. The findings reported here suggest that perceptions of

procedural fairness do not by definition lead to the outcome of the procedure being perceived as fair. A possible explanation for perceptions of procedural justice failing to lead to perceptions of distributive justice may lie in the value protection model's assertion that people have moral mandates on the outcome of decisions to be taken on moral issues. In this particular case, the respondent had been subjected to a decision that he considered unfair because it was not proportional to the offence. In other words, it may be the breach of a moral mandate which is responsible for the fact that perceptions of procedural justice did not lead to perceptions of distributive justice.

§1.3. Concern for needs

§1.3.1. Description of results

The interviewees expressed three types of needs to be met by the judicial authorities: (1) emotional needs, (2) needs for participation and (3) needs for authorities' intervention. Only one **emotional need** was mentioned. The father of two child victims expressed a need for magistrates to protect child victims to a greater degree. As for the third category, two persons talked about how the judicial authorities **had not been there when they had needed their help**. One offender for example told about how the authorities had refused to help his family by putting his stepson in a juvenile institution, which had led to an escalation of the situation and as such to him committing the offence. All the other needs that respondents experienced during this phase of the proceedings related to **participation**.

Receiving information

Six offenders and eight victims charged the authorities for not properly informing them about how the criminal proceedings would develop, about the progress being made in the investigation or the actions being taken by the authorities, about how much more time it would take for the case to go to trial and, for offenders specifically, about what exactly they were being accused of and the punishment they risked. Victims also want answers to such questions as 'who will pay for my surgery?' or 'what will my role in the trial be?', and two were astonished to find out during the interview that they would not be informed of the date of the trial unless they registered as an injured person. As for information on how much time it will take for the case to go to trial, one of the victims said that it is understandable that the criminal justice system cannot process all cases within a reasonable time, but that victims should at least be informed about the progress of the case and about whether the suspect will be brought to court. Some said that receiving a letter informing them that it will still take a while before the case will go to court is preferable to not being informed at all.

"Waar ik op sta te wachten eigenlijk, op informatie (...). Want nu lig ik soms in mijn bed te denken van wat gaat er nu gebeuren, hoe ver gaat dat gaan, hoeveel ga ik moeten betalen, zo van die dingen (…) Als ze nu wel eens wat meer informatie zouden geven, dan kan ik zien van zo en zo en daar sta ik. (…) Dat is de reden waarom ik mij niet juist behandeld voel." (Male offender, theft (respondent 40), non-participant)

A lack of information about one's rights and the criminal proceedings inhibits active involvement in the trial. One victim referred to the fact that the letter that victims receive to inform them of the day of the trial does not explain in detail how exactly a trial works. There was also an offender who contemplated about the letters one receives from the court. He especially stressed their old-fashioned nature and their incomprehensibility to ordinary people, and said that these have a major influence on offenders' capacities to attend the trial. He contemplated that it should be no surprise that many, especially those from lower social classes, are convicted in absentia. In fact, so he said, only highly skilled citizens are able to understand the possibilities for participation in the proceedings.

"Ik ben er eigenlijk heel zeker van dat heel wat mensen daar gewoon op zitten te staren en denken wat is dat hier. (…) En dat is toch wel belangrijk om uw belangen te kunnen verdedigen of laten verdedigen, dat je snapt wat daarin staat en wat de bedoeling is en wat de mogelijkheden zijn." (Male victim of theft (respondent 37), non-participant)

The criminal justice system is perceived as highly complex; it is not sufficiently transparent for litigants to be able to participate in the criminal proceedings and thus to properly defend their interests. The lack of information on how trials proceed hinders meaningful participation of these people in the criminal proceedings. One victim, herself a social worker and thus possessing some knowledge of the criminal justice system, said that even to her the system is not transparent.

"Je krijgt zo papieren mee dat je je als benadeelde partij kan registreren. En ergens op die papieren staat er zo van, als je financieel schadevergoeding wil, dat is zo complex dat je beter een advocaat neemt. En dat vind ik dan zo, dat is ook mijn kritiek bij heel dat rechtssysteem, het is te complex, dat is niet meer werkbaar." (Male victim of violent robbery (respondent 49), participant)

"Als slachtoffer zonder advocaat ben je een vis in een hele grote vijver, en ik weet dan al iets van het gerecht, en zelfs voor mij is het, dat is echt… *(zucht).*" (Female victim of stalking (respondent 18), non-participant)

Active involvement

One should of course, before accusing the criminal justice system of making it too difficult for victims and offenders to participate in the trial, first ask the question whether they *want* to participate. I will consecutively discuss victims' and offenders' **need for active participation**.

Victims All victims participating in this study were asked whether they planned to attend the trial and whether they wished to speak in court. Not all victims at the time of the first interview had already decided on these issues. Eight victims mentioned one or more reasons for *attending the trial*; eighteen mentioned one or more reasons for not doing so. Eleven victims mentioned one or more reasons for *speaking in court*; thirteen victims mentioned one or more reasons for not doing so. These reasons were so diverse that I put them in a table for the sake of keeping an overview (see Table V-III below). The number of victims mentioning any particular reason is between brackets. A final note is that the reasons that were mentioned for (not) speaking in court were classified in two categories. Some reasons pertain to the specific situation in the particular case. Other reasons relate to the victims' characteristics: they are individual characteristics that would prevent the victim from speaking in court no matter the specific case or crime (see Table V-IV on page 224).

Table V-III: Victims' reasons for (not) attending the trial

VICTIMS   ***REASONS FOR (NOT) ATTENDING THE TRIAL***
REASONS FOR NOT ATTENDING THE TRIAL
• It would require too much of my time. (N = 3)/ I do not feel like going. (N = 1)
• I am afraid that if I go, the offender will take revenge (case of neighbours' quarrel). (N = 3)
• I am afraid to see the offender. (N = 2)/I want the offender to remain anonymous to me. (N = 1)
• I participated in mediation and we reached an agreement on the damage. (N = 3)
• I participated in mediation; on a psychological level the case is now closed for me. (N = 2)
• Attending the trial would require me to relive the experience; I find that too hard. (N = 2)
• The case is clear. All information is in the dossier, so there is no need for me to be there. (N = 2)
• From now on it is not up to me anymore, it is up to the judge. (N = 2)
• I am a bit afraid of court, the whole context. (N = 2)
• I leave everything to my lawyer. (N = 1)
• I would only feel sufficiently confident to attend the trial if I had a lawyer, but these are too expensive. (N = 1)
• My attendance will have no impact on the outcome anyway. (N = 1)
• The offender's family will be there and I do not want to meet them. (N = 1)
• I do not see how attending the trial would be beneficial for me. (N = 1)
• Why should I go? I have done nothing wrong. (N = 1)
• If I would go, I would reward the offender (a stalker) with attention. (N = 1)
• The only reason to go would be to learn the sentence. I can learn about the sentence afterwards. (N = 1)

REASONS FOR ATTENDING THE TRIAL

- I have never attended a trial, I am curious to see what it is like. (N = 3)
- I will only attend the trial if it is absolutely necessary in order to receive financial compensation. (N = 2)
- To hear what is said. (N = 1)
- To see the offender. (N = 1)
- To find out what the offender has to say, what his arguments for defence are. (N = 1)
- I want to receive some information about where I stand and how the case will proceed. (N = 1)
- I want to communicate to the offender that what he did was wrong, just by my presence. (N = 1)
- It puts an end of the case; I want to attend that moment. (N = 1)
- To learn the verdict. (N = 1)
- To find out whether the fact that we participated in mediation has an effect on the sentence. (N = 1)

Table V-IV: Victims' reasons for (not) speaking in court

VICTIMS
REASONS FOR (NOT) SPEAKING IN COURT

REASONS FOR NOT SPEAKING IN COURT

Reasons for not speaking in court in this particular case

- The case is clear, I have nothing to add, there is no need for me to speak in court. (N = 4)
- I have been able to tell my story to a victim support worker (N = 1)/I have been able to tell my story during the mediation/to the mediator (N = 2), and I am fine now.
- I fear revenge by the offender if I would speak my mind in court (case of neighbours' quarrel). (N = 1)
- The crime was not very serious. (N = 1)
- The offender by now has learned his lesson; there is no need for me to address him again. (N = 1)
- I am satisfied with the way the case has been dealt with (trust in the authorities). (N = 1)
- The offender's family will be there and I do not get along with them, I do not want to see them. (N = 1)
- I would not want the things I say to have an effect on the sentence; I do not want to be the one responsible for a harsh sentence. (N = 1)
- It would be too difficult for me to answer questions about the offence in the presence of the offender. (N = 1)

General reasons for not speaking in court – individual characteristics

- It is not up to victims to judge their offender(s). (N = 3)
- I am not the type of person who wants to get the most out of such a case (financially). (N = 3)
- I am afraid that the offender's lawyer would ask me questions. (N = 2).
- It is not my character/I would not dare to. (N = 2)
- I am too afraid of the whole setting. (N = 2)

- Talking to a judge is dangerous; there is a big chance on misinterpretation of one's words. I would be too afraid to say something that could be misinterpreted. (N = 1)
- I leave it to my lawyer; she has studied for this and knows exactly what to say. (N = 1)
- I would not be able to control myself if the judge would behave arrogant towards me. (N = 1)

REASONS FOR SPEAKING IN COURT

- I would like to express to the judge my opinion on punishment. (N = 5)
  Note that each of these five persons would like to request the judge to be *lenient*.
- I would speak in case the defence starts telling lies and falsehoods. (N = 2)
- I would do it to make sure that the judge imposes a contact-ban on the offender. (N = 1)
- I would like to say that I hope the offender gets punished for his acts. (N = 1)
- I want to confront the offenders so that I am not just an anonymous person anymore for them. (N = 1)

Offenders In offenders' cases, attention should go not only to their plans of participating in the trial but also to the degree to which they feel they have had a chance to voice their opinion during the interrogation by the investigating judge. Two of the four offenders who encountered an investigating judge reproached him for not having taken the time to decently listen to their story, and as reported above, the manner in which they were treated prevented three of them from having their say.

"V: Dus jullie zijn alle vier tien dagen de gevangenis in gegaan? (…) Vond je het terecht?
R: Neen, eigenlijk niet. Helemaal niet eigenlijk. Ik heb zelf… Ik vond dat ze toch tenminste meer naar mijn verhaal hadden mogen luisteren, de onderzoeksrechter ook." (Male offender, violent robbery (respondent 48), participant)

I will now turn to the reasons given by offenders to attend the trial and speak in court. None of the offenders participating in this study doubted about whether to attend the trial; this was quite obvious to them. No more than three offenders expressed a specific reason to attend the trial (see Table V-V below). Furthermore, there were four offenders who said that they would refrain from voicing their opinion in court (for the reasons see Table V-VI on the next page).

Table V-V: Offenders' reasons for attending the trial

OFFENDERS ***REASONS FOR ATTENDING THE TRIAL***
• To show that I care about my future. (N = 1)
• To see the people who will decide about my future. (N = 1)
• It will allow me to ask the judge for a payment plan so that the compensation to victims can be paid in instalments. (N = 1)

Table V-VI: Offenders' reasons for not speaking in court

OFFENDERS *REASONS FOR NOT SPEAKING IN COURT*
• Lawyers are better trained to speak in court and know exactly what to say. (N = 1)
• One should be very careful about what one says in court. (N = 1)
• Speaking in court does not change anything about judges' opinions; it has no effect at all. (N = 1)
• I told my story to the investigating judge; there is no need to repeat it to the judge in court. (N = 1)

Six offenders said that they did not believe that speaking in court would change anything to the outcome. As this concerns an important aspect of procedural justice, it merits some highlighting. One of the offenders said that the only reason to offer offenders a chance to speak in court is to make them feel good. Another one added that what happens in court is only 'show'. Only one offender made an allusion to the fact that voicing one's opinion in court may be fulfilling for oneself – the other ones regarded speaking in court solely in instrumental terms, that is, with reference to whether it may change something to the outcome. Offenders who had a previous experience with the courts were not generally impressed by the degree to which judges had listened to their stories on those previous occasions. Some blamed judges for this, others said that there is simply not sufficient time to do so – which some said they understand.

"Het is volgens mij alleen maar schijn, om de mensen niet het gevoel te geven van ik ga daar naartoe en ik heb daar niks mogen zeggen en dat ging daar maar rond." (Male offender, theft (respondent 39), non-participant)

Two final remarks on active participation are the following. A first remark is that those people who said that they would not attend the trial or speak in court are not to be equalled to people who do not value voice or opportunities for participation. This I conclude, first, from the fact that participation may sometimes be avoided for reasons such as being afraid of the offender or of the court context – which does not mean that these people do not value voice. Second, people do attach great importance to the possibility that a lawyer represents them in court and conveys their story to those present there in case they do not feel up to it themselves. Voice, then, is important to nearly everyone, but not all feel the need to exert it themselves. Some are more comfortable leaving it to a lawyer, but that does not mean that they do not value that their side of the story is told in court. The second remark relates to this first one: a victim stressed the importance of never feeling forced to participate; one should be able to freely choose how one would like to be represented in court.

"V: Is het belangrijk dat je iets mag zeggen?
R: Dat hangt ook weer af van... ja, het is vooral belangrijk als je merkt dat je anders uzelf niet kan verdedigen. Als je als slachtoffer niet verdedigd wordt dan moet je jezelf kunnen verdedigen, en in dat geval moeten wij het woord krijgen ja." (Male victim of theft (respondent 37), non-participant)

"Ik denk wel dat je die kans, dat het belangrijk is dat je het gevoel hebt dat je die kans hebt. En dat je dan zelf voor jezelf kan uitmaken van, ik kan die kans nemen als ik dat wil, tegenover als je zegt ik ga daar nu zitten en ik weet toch op voorhand dat ik niets mag zeggen. (…) Het is hetzelfde gevoel als bij die bemiddeling, dat je zelf kunt beslissen van ik doe het of ik doe het niet." (Mother of female victim of sexual abuse (respondent 50), participant)

Respondents' need to participate in the criminal proceedings was not only gauged through open questions; they were also asked to judge a number of **survey statements** relating to participation. Three statements asked respondents for their need for **process control**, which was interpreted in a strict sense as having control over the procedures used in court. Court procedures are strict; all roles are defined as well as when certain people are allowed to speak and when they are not. The three statements on process control were meant to find out whether people agree with these procedures or would like to have a say on them. The three statements were: (1) "[it is important that] I will be able to exert some control over the proceedings"; (2) "[it is important that] I will have a say on the court proceedings" and (3) "[it is important that] I will be able to intervene if I believe the procedures are not being applied correctly".

In general, those respondents who knew how trials work thought the procedures guiding court trials are correct and did not display a need to change these. The most often mentioned reason is that the procedure allows all the parties to speak: everybody is allowed a moment to voice his/her own opinion and therefore the procedures are considered correct. This is important information with a view to the significance of voice. Also, the respondents felt that the course of the proceedings should remain in the hands of the judiciary. One person said that if litigants get to have a say in how the court proceedings run their course, the system would not be fair anymore. On the other hand, it was considered important that one is allowed to intervene when one sees that the procedures are not applied correctly. One participant did remark that in order to be able to do so, litigants need to *know* the procedures, which is where the shoe often pinches.

"Uiteindelijk, zoals het nu is komen alle partijen aan bod. Dat is ok. Uiteindelijk wordt iedereen verhoord, en heeft iedereen zijn zeg." (Mother of male victim of intentional assault and battery (respondent 30), participant)

"Je wil dat allemaal wel volgen maar je moet die rechtszaak niet in de hand hebben he, je gaat toch voor eerlijkheid he." (Female offender, intentional and unintentional assault and battery (respondent 46), participant)

"Het lijkt mij onwaarschijnlijk dat ik dat kan beoordelen dat de procedure onjuist verloopt." (Male victim of intentional assault and battery, threats and vandalism (respondent 45), non-participant)

Another five statements were inserted in the survey to measure people's **need for voice**. These were: (1) "[it is important that] I will have ample opportunity to state my position and clarify my wishes"; (2) "[it is important that] the judge will give me feedback after I have spoken"; (3) "[it is important that] I will be able to speak to the judge in person if I wish to do so; (4) "[it is important that] I will be allowed to spontaneously address the judge if I have a question" and (5) "[it is important that] the judge will allow me to speak on my request". The first and second of these statements did not elicit many comments, possibly because the opportunity to speak in court and judge's attitudes had already been discussed thoroughly during the interview, but the other three statements did give rise to a great deal of discussion. The third statement, for example, gauged the extent to which respondents would like to be able at one point in the procedure to talk to the judge that would handle their case *in person*. This at present is not possible in the Belgian criminal justice system, but respondents were asked whether they would choose to do it if it were an option. Answers were divided; many had doubts.

Two offenders and one victim liked the option of speaking to the judge in private because it would give them a chance to tell their story without being watched by an audience; one offender said he would not want to speak to the judge because of the way judges act. One offender's reason for being in favour of talking to the judge if it were possible is that it would allow the judge to form a true image of the offender instead of relying on documents. Two others said that personal contact with the judge cannot be combined with judges' neutrality, and two offenders said that all would depend on whether the case was clear.

"Maar ja, dan zit je weer met een van die vorige vragen, gaat hij onpartijdig zijn – ah neen, dan kan hij niet meer onpartijdig zijn." (Male offender, intentional assault and battery (respondent 31), participant)

"Dan kan ik misschien dingen zeggen die ik in publiek niet durf zeggen. Echt op persoonlijk niveau." (Male offender, fraud (respondent 33), participant)

"Het is ook een moeilijke vraag want het hangt van de zaak af he. Ik vind het in mijn geval nu wel belangrijk, maar ik zal u zeggen vroeger, ik had iets gepikt, wat moet ik dan nog gaan zeggen? Dan is dat niet zo belangrijk. Nu gewoon is het belangrijk want ik heb het moeilijk met deze zaak. Maar niet in eender welke zaak." (Male offender, intentional assault and battery (respondent 8), non-participant)

One victim said that he would like to speak to the judge in order to ask him/her not to be too harsh on the offender when deciding on the sentence. This was the only victim who explicitly mentioned

an instrumental reason for talking to a judge. Yet be aware that the instrumental reason in this case was to influence the sentence so that it would be *mild*. None of the offenders explicitly mentioned an instrumental reason to go speak to the judge; those who explicated their reasons were more concerned with being able to tell their story in private and in a quiet environment. Of course, I do not know the motivations of the respondents who did not elucidate on their answer to the statement.

Note that people do take into account the practical side of litigants having private meetings with judges. Two participants said that it is simply not feasible for judges to talk to every single victim and offender in person because of a lack of time.

"R1: Arme rechter, als iedereen dat doet.
R2: Dan geraken ze nooit rond, het is nu al zo erg." (Male offenders, intentional assault and battery and vandalism (respondents 9 and 10), participants)

The fourth and fifth statement (about being allowed to spontaneously address the judge if one has a question and to be allowed to speak when one asks to do so) elicited similar comments. Many said that if everyone would be allowed to spontaneously talk in court, chaos would be the consequence, but that it should be possible to raise one's hand and ask if one can say something or comment, although this opportunity should be used sparingly. The participants clearly felt that it is important that everybody respects the rules and waits for one's turn to speak.

"Ik denk dat het dan een warboel wordt. Noteer het dan als je iets wil zeggen en dan kun je het zeggen als je tijd daar is. (…) Er zijn overal procedures he, je moet bij de dokter ook niet voorsteken." (Female victim of intentional assault and battery (respondent 32), participant)

A final note on the survey statements on participation and process control is that no significant differences were found between victims and offenders as for their opinion on the statements.

§1.3.2. Discussion

Neither victims nor offenders mentioned many other needs than the need for participation. This need will be at the centre of this discussion.

The importance of receiving information

Fourteen participants were dissatisfied about the degree to which they had been informed by the judicial authorities on the criminal proceedings. The study shows that the need for information is high and as such confirms previous findings by e.g. Wemmers (1995, 1999), Strang and Sherman

(2003), Carr *et al.* (2003) and Lemonne and Vanfraechem (2010), though I should mention that these studies have specifically looked into *victims'* need for information. Studies on offenders' need for information during the course of criminal proceedings are rare.

Comparing the results of the current study to those that resulted from Lemonne and Vanfraechem's study on crime victims leads to an interesting observation. The scholars write that the reasons for the victims participating in their study to participate in criminal proceedings were first and foremost related to receiving information and clarification on certain matters. These were certainly important reasons for the victims participating in the current study too, but whereas Lemonne and Vanfraechem add that their victims' reasons for participation were not related to e.g. formulating conditions on the sentence, the results of the current study, in particular those presented in Table V-IV, do suggest that influencing the sentence to some victims is the main reason for taking the floor in court, albeit that they want to voice their opinion in order for the sentence to be *lenient*.

The content of the information

It seems that victims expect other information content-wise from the judiciary than from the police. In the first phase of the criminal proceedings they long for information about the offender in particular and what happened to him/her; in this phase of the proceedings they wish to be informed about the investigation, the proceedings, their rights and the outcome of the trial. Offenders' needs for information were much the same in both phases of the proceedings, concentrating on the criminal proceedings and the punishment one risks.

Lack of information impediment to active participation

Some cases show that a lack of information may have a detrimental effect on victims' and offenders' ability to *actively participate* in the criminal proceedings. Translating this finding in terms of procedural justice, litigants' ability to exert voice may be impeded by the non-transparent character of the criminal justice system, which is mainly due to: (1) the jargon used in letters, which prevents people from being fully informed about what is awaiting them, (2) a lack of information about one's rights and (3) the complexity of the criminal justice system and a lack of information to remedy this. These may lead to people feeling unable to make sure that their story is heard.

The relation between receiving respect and participation

Above respondents' comments on the survey statement "I would like to be able to speak to the judge in person if I wish to do so" were described. One reason for not doing so, mentioned by an offender, was that judges do not treat people well. This observation provides evidence for the

importance of treatment as proposed by procedural justice theory. It also adds to what was described earlier on when discussing the factor 'dignity, respect' in the first section, *i.e.* that perceptions of a lack of respect may withhold people from participation, that is, that there is a relation between the procedural justice antecedents of 'receiving respect' and 'participation'. Participation in criminal proceedings may be inhibited by concerns relating to standing.

Incompatibilities between receiving respect/ neutrality and participation

Another important reason for *not* speaking to the judge in private if that were possible was that if litigants go speak with judges personally, judges cannot maintain neutrality. This means that litigants perceive a relationship between 'participation' and 'absence of bias', in the sense that certain ways of participation by victims and offenders in the criminal proceedings may be perceived as preventing judges from judging cases in an impartial manner. This suggests an incompatibility between different antecedents of procedural justice. The perception of fulfilment of one antecedent may be neutralised by the corresponding perception of a lack of fulfilment of another antecedent.

This finding could possibly explain, at least in part, why studies into participation of victims in criminal proceedings (e.g. by means of victim impact statements) often do not find higher satisfaction rates among victims who participated than among victims who did not. Explanations that have been proposed are that victims are disappointed about the fact that their victim impact statement did not have an effect on the sentence (Erez *et al.*, 1994), that they are simply not eager for increased participation in the criminal proceedings (Davis and Smith, 1994), that they do not have legal standing in court (Henley *et al.*, 1994) or that completing a statement is not sufficient, that they also need to be informed in order to be satisfied with the criminal justice system (Giliberti, 1991). I myself have argued that victim impact statements for a number of reasons may only positively affect perceptions of fairness to a limited degree (De Mesmaecker, 2007). The current study suggests an extra explanation: it could be that victims who participated feel good about this chance for participation in se but on the other hand feel that the neutrality of the judge was affected. Entering into this discussion inequity theory, which states that even people over-rewarded by an exchange experience inequity distress, may counter criticisms that victims would not have any problem with a perceived lack of neutrality as long as it would be to their advantage.

The value-expressive effect of voice

Six offenders said that they did not believe that speaking in court would change anything to the outcome of the trial. But only one of these six said that he felt no need to speak in court *for this particular reason*. Four of these six still wanted to voice their opinion in court, two of whom said that

they in each case want to defend themselves and one of whom would do so for himself, for his own relief. The fourth one said that he would prepare something to say but did not mention the reason for doing so, which given the fact that he believed it would not change anything would have been interesting. The fifth of these six offenders had no need to speak in court but gave another reason; his belief that speaking would have no effect was not the reason for not doing it. So notwithstanding their belief that there is no instrumental purpose in speaking in court, four still would do so. This supports the independent value of exerting voice as described by among others Tyler (1994): exerting voice enhances feelings of self-esteem and group status even if it does not influence outcomes.

Similarly, the reasons for (not) participating in the trial suggest that to some victims, it does not matter to whom exactly they can vent their story as long as they are able to tell it to someone. Some cases show that when a victim has been able to tell its story to a victim support worker or a mediator, the need to be able to tell this story in court is less great. This finding suggests that victims indeed have a great need to tell their story (voice) but that this does not automatically imply that they have a great need to tell it to the judicial authorities. They want to be able to tell their story to someone; this may be a victim support worker or a mediator, not necessarily a magistrate in court. This finding suggests that exerting voice – telling one's story – is not instrumental; in case victims tell their story to a victim support worker and after that feel no further need to tell it to the judge, telling their story is hardly likely to have any influence on the criminal proceedings.

On the other hand, the list of reasons for victims to attend the trial/speak in court shows that instrumental reasons do have some importance for victims deciding on whether to speak in court, which means that voice does not always have an independent effect on procedural justice. To some victims, exerting voice only seems sensible if doing so will have an effect on the outcome, which is a conclusion in line with Folger (1977) and Lind *et al.* (1990), both of whom suggested that voice effects involve *both* instrumental and non-instrumental concerns. The results reported here, then, confirm that voice may be exerted both because of instrumental and non-instrumental concerns.

One last remark is the following. Possibly, the reason why the defenders of a procedural justice model that includes no instrumental motives for participation have been so reluctant to accept that instrumental reasons too may shape the need for participation is that they have assumed a revengeful victim, not a victim who would use the opportunity to participate to plea for mildness towards the offender. But the majority of the victims who wished to express their opinion on punishment in court said that they wanted to ask the judge not to be too harsh on the offender. This is an instrumental reason, but not in the sense that the term is traditionally used in procedural justice literature.

A new interpretation of decision control, process control and participation

Near the end of the description of results on the need for participation in criminal proceedings it was mentioned that victims may not all have a need or dare to attend the trial or personally speak in court, but that they do attach great importance to being represented. Remember that one victim said that what is most important is that victims can *choose* whether they would like to participate personally. This victim in fact addressed the element 'decision control' that figured especially in the first writings on procedural justice (e.g. Thibaut and Walker, 1975).

Decision control has from the beginning been considered less important than process control and has throughout the years been abandoned as a factor of importance to litigants. Yet what this victim says is that decision control to victims in fact does have great importance. It is crucial that victims can decide themselves about how and to which degree they want to be involved in criminal proceedings and that opportunities exist for those who wish to participate. Decision control, in other words, is important, but decision control has so far solely been considered in relation to punishment. The current study confirms that victims do not wish to have decision control on the sentence (see chapter seven), but the finding reported here does suggest that decision control is important when it relates to the decision to participate in criminal proceedings (by way of speaking in court, attending the trial or participating in mediation). I suggest, then, that justice researchers again take decision control into account, relating it not to punishment but to participation in decision making processes.

Taking this argument further, I suggest that what was found about the importance of decision control sheds a new light on the confusion between process control and participation. The terms are often used interchangeably and both are also often equalled to voice. I suggest that process control and participation should be distinguished. *Process control*, as I see it on the basis of the findings of the current study, relates to *taking a decision on whether one wishes to participate*. Process control in my view necessarily involves decision control: I do not see how it is possible to state that people have process control when in case they ask for example for extra investigations to be conducted, this request can be refused by a magistrate. Possibly, then, the traditional distinction between process control and decision control is an artificial distinction. *Participation* is a term that I believe should be used for designating *the concrete options* that are available for involvement in criminal proceedings.

The relationship between participation in mediation and participation in the trial

The description of reasons victims gave for (not) attending the trial or for (not) planning to speak in court shows that participation in mediation has an influence on some victims' motivation to attend the trial or speak in court. In case mediation was successful, on an emotional or a financial level, to some victims the need to attend the trial or to have a say in court disappears. One victim said she

was in fact relieved that the fact that the mediation was successful gave her the chance to avoid going to the trial. One of the mediators during the focus groups confirmed that she too is often confronted with victims saying that to them the mediation experience has allowed them to close the matter and they consequently do not feel the need to go to court anymore (*"Ja dat ervaar ik ook vaak. Dat slachtoffers zeggen voor mij is het uitgeklaard, ik hoef niet meer aanwezig te zijn op die zitting").* The finding also confirms Van Camp's (2011) observation that some victims perceive the trial as complementary to the restorative intervention instead of the other way around.

The finding becomes even more interesting when adding Van Camp's finding that having had an opportunity to speak in court does *not* lead victims to decline the offer for mediation. A number of those victims who participated in Van Camp's study and already had had a chance to have their say in court before proceeding to mediation, said that this opportunity could not replace having a conversation with the offender. The reasons were that the answers to their questions could only be obtained from the offender, that they wanted to make sure that the offender would understand the impact of the victimisation, that they wanted to hear the full truth about what had happened or because it allowed to do away with tensions between the two parties and to find closure. The restorative intervention, then, may be a substitute for the trial, but the trial cannot provide a substitute for a restorative intervention.

§2. Neutrality

§2.1. Absence of bias or prejudice

For the sake of clarity I repeat that 'absence of bias' was understood as impartiality between victim and offender or between accomplices, whereas 'absence of prejudice' was interpreted as absence of premature judgement about the alleged offender's guilt or about the victim's role in the offence.

§2.1.1. Description of results

As few respondents had had any contact with magistrates pre-trial, only one reference was found to *biased magistrates*. An offender who had encountered an investigating judge was convinced that (investigating) judges are harsher towards young men such as him than towards "older people with good jobs", which he considered unfair.

"Hij *(de onderzoeksrechter)* was bruut gewoon (…) van jij bent een jonge gast en nu ga je het uitzweten. (…) Met een oudere mens zullen ze dat niet doen. Een oudere mens met een goede job, die zullen ze nog minder straf geven dan een jonge gast. En dat vind ik niet juist. Helemaal verkeerd." (Male offender, theft (respondent 40), non-participant)

Three **survey statements** assessed the importance that the participants attached to judges' impartiality between the parties in the conflict (that is, between victim and offender). The first statement was "[it is important that] the judge will be impartial and will favour neither party", the second was "[it is important that] the judge will treat all parties alike, that he will not discriminate", the third was "[it is important that] the judge will apply methods that treat all parties equally". The comments that these statements elicited relate to two aspects. First, respondents commented on whether it is eligible for judges to be harsher on offenders than on victims; opinions were mixed. This issue was elucidated on several times before.

"Naar slachtoffers toe moet hij toch wel milder zijn dan naar daders. Minder dat kordate dat ze naar daders moeten doen. Die moeten op hun feiten worden gewezen. De dader moet hij wel wat straffer aanpakken dan het slachtoffer." (Female victim of intentional assault and battery (respondent 32), participant)

"Hij moet dat gewoonweg rechtvaardig doen, voor iedereen hetzelfde he. (…) Wie of wat het slachtoffer is, ik blijf ook een mens he." (Male offender, sexual abuse (respondent 53), participant)

Second, whereas the second statement assessed the importance of equal treatment of victims and offenders, one victim explicitly said that he interpreted "not to discriminate" narrowly, in a racial discrimination sense. In other words, there may have been participants who did not interpret the statement in the way it was meant. It could be that among those who answered the statement without delivering any comment there were others who considered racial discrimination when answering the statement instead of the equal treatment of victims and offenders.

The analysis of the survey data on the above three survey statements showed no significant difference between victims' and offenders' answers.

§2.1.2. Discussion

The conditionality of standing

The results confirm what was written above about the conditionality of standing. Some feel that depending on one's status (victim/offender), one is entitled to a greater or lesser degree to respect from judicial authorities. But discrimination based on other factors, such as age or race, is rejected.

§2.2. Fact-based decision making

As said, the category 'fact-based decision making' includes all references to the importance of information-gathering by the authorities.

§2.2.1. Description of results

The element 'fact-based decision making' is the most important one of the three elements falling under the heading 'neutrality'. Both victims and offenders mentioned a few things relating to the degree to which **authorities have done their best to gather all relevant information on the case**. An offender complained that the authorities do not take the effort to make sure the judge possesses of recent and up-to-date information. He referred to the use of reports about his personality which according to him are outdated, because they date back from the time he first entered prison. After a few years in prison, so he said, his personality had changed, but no new psychological report was composed. The judge therefore would need to take a decision on the basis of outdated reports.

One victim had experienced that the police sometimes insinuates or misunderstands certain things and then passes on this incorrect information to the judge. She said that she had once proven the police's information to be wrong, but that the authorities kept on using this information. Another victim said that the authorities should **put more effort in trying to find out what kind of person the victim is**. The reason for this suggestion is that according to him judges are forced to take on the role of psychiatrist, which is something for which they have not received training. It would be better, this person uttered, if judges would receive reports not only about the offender but also about the victim in order to make a proper judgement.

"(…) dat zou ook voor hem *(de rechter)* nuttig zijn, vind ik, dat ze die persoon *(het slachtoffer)* eens ondervragen. (…) Ik vind dat er een verslag zou moeten opgemaakt worden van de personen die op de rechtbank komen. Want de rechter beslist op korte tijd, dat ziet er een serieuze gast uit en die niet, die moet psychiater spelen ook nog. En dat vind ik verkeerd." (Male victim of intentional assault and battery (respondent 11), participant)

In a similar vein, an offender uttered that **judges do not have sufficient background information about the offenders** they are confronted with to make a good decision on how to sanction any particular offender. Arguing that psychiatrists have had more than ten years of training, he said it is impossible for judges to make a good assessment of the people they are confronted with in fifteen minutes (referring to the time that is on average spent on cases in court). Acknowledging that it would be inconceivable to spend hours on each and every one case in court he suggested that another methodology should be developed, for example to have offenders appearing in court fill in a questionnaire indicating their marital status, their family and financial situation, their place of residence etcetera in order to get more information about the social status of the offender.

"Die moet daar in een vrij korte tijd een oordeel vellen over u. Allez, ik kan me toch niet inbeelden, daaromheen kort vragenlijstje, dat men toch een klein beetje kan situeren. (…) Als je zegt, ik woon in (stad) in die straat, dan zeg ik ja, daar staan alleen maar villa's, die komt van een goede thuis. Overzicht getrouwd of gescheiden of kinderen of niet, je kunt die persoon, op zeven of acht indicaties moet je toch kunnen weten, die man of vrouw hier voor mij, dat je toch iets van achtergrond weet." (Male offender, intentional assault and battery (respondent 36), participant)

One important issue is offenders' opinions about the **quality of the investigation**. An offender who was satisfied about the thoroughness with which the case had been investigated referred to the fact that there had been a mediation process, that a justice assistant had come to his home in person to observe the situation and that everything had been written down in reports. Most importantly, he said that all this had raised his confidence that the trial would be conducted fairly. In other words, a fair trial according to this respondent's statements is based on a thorough investigation of the case throughout which all information necessary to make a good judgement is gathered. Three offenders expressed discontent about the investigation of their case. The offender who had participated in penal mediation told about how she had gotten the impression that to the authorities it was more important that one of the parties would confess than to uncover the truth.

"Ze wachten twee jaar tot de rechtszaak, en in die twee jaar is er geen enkel onderzoek geweest. Ze hebben het met de natte vinger gedaan." (Male offender, intentional assault and battery (respondent 8), non-participant)

Four **survey statements** gauged the importance that the respondents attached to a thorough investigation of their case. The statements were: (1) "[it is important that] the judge will carefully examine the evidence", (2) "[it is important that] the judge will carefully explain the reasons for his decision", (3) "[it is important that] the judge is very well acquainted with the dossier and is thoroughly prepared" and (4) "[it is important that] the judge will examine the case carefully and will take the time to do so".

The common denominator marking the comments on these statements was that they are important yet unfeasible because of the heavy case load of judges and because files often are composed of hundreds of pages. People would say that it is important that judges are well-prepared, but that one cannot expect them to know the smallest details of every case. One offender and one victim said that it is not *desirable* that judges know the files into detail in advance because in case they do, they might be less open to the information added in court. As for the statement that sufficient time should be taken for dealing with cases in court, again some respondents replied that it is not feasible to take much time for every case in court because of the high case load. Some people added that the time that should be spent on a case in court depends on the complexity of the case.

"Ik kan mij voorstellen dat dat een klein beetje utopisch is, dan denk ik aan de andere extremen, dossiers van tienduizenden bladzijden. Dat kan gewoon niet. En bij dit, dat zal een redelijk klein dossier zijn maar dat zal toch ook al wat zijn. (…) Dat kan een mens niet. Dat gaat niet." (Male victim of theft (respondent 37), non-participant)

"Ik denk eigenlijk dat het beter is dat de rechter gewoon het verhaal op het moment zelf vooral neemt zoals het komt. Van dat is er gebeurd en dat is er gebeurd. (…) Ik vind het belangrijk dat hij wel op de hoogte is van de zaak, maar dat hij ook nog open staat voor dingen die niet in de verklaringen staan en die daar nog op tafel worden gegooid." (Female offender, intentional and unintentional assault and battery (respondent 46), participant)

"Een rechter kan niet over elke zaak bezig blijven he, er moet ook wat vooruitgang inzitten, er moeten uitspraken komen. Je kunt niet alles zitten uitspinnen tot in het laatste, toch niet in dit geval, er zijn wel zaken waar dat wel moet natuurlijk." (Male victim of intentional assault and battery (respondent 12), non-participant)

One last word about the category 'fact-finding', which evinces its importance, is that to some respondents **the main reason for participating in mediation** was that this would allow them to convey to the judge extra information about the facts and its consequences. Two victims and one offender mentioned this as their motivation for participating in mediation. Remark that there were no significant differences between the victims and the offenders participating in the study as to the importance they attached to the statements gauging for the need for good fact-finding.

§2.2.2. Discussion

The motivation behind the importance of fact-finding

What victims and offenders have in common is a feeling that judges do not have sufficient information about the persons they are judging. The results suggest that the reason people care about fact-finding is instrumental: only when they have all relevant information, judges can make a good decision about the sentence most appropriate for a given offender. The reason people are concerned about good information-gathering is that they consider it important with a view to the outcome.

Lack of control over evidence

One victim's mother reproached the fact that neither she nor her boyfriend (the offender) had the power to do anything against the use by judges of reports they know are outdated or information in the file that they know is false. It shows that litigants may feel that they do not have sufficient control over the exact information that is conveyed to the judge. This relates to Thibaut and Walker's interpretation of 'process control'; but as explained above, where I elucidated on the difference between process control and participation, I would say that they felt a lack of opportunities for *participation*, *i.e.*, for voicing their opinion on the evidence.

Note that those who complained about this together decided to participate in mediation for this reason exactly: it allowed them to convey to the judge information about their relationship, to show him that they are doing fine as a couple and that the man is not at all like he is described in a psychological report that was written years before. In other words, participation in mediation may be perceived by victims and/or offenders who have no other way to participate in fact-finding, that is, who experience a lack of opportunities for participation, as the only channel left to them. This is an example of how mediation may be instrumentalised to serve the purpose of fact-finding.

§2.3. Honesty

§2.3.1. Description of results

Statements pertaining to magistrates' (dis)honesty were found in two offender interviews only. The first respondent said that the investigating judge had asked him if he had ever committed a crime in the past, to which the man had replied that he had not, after which the judge had confronted him with his criminal record that showed that he had indeed committed a crime in the past. The offender explained that he had misunderstood the question – he thought he had been asked whether he had ever been detained in prison. He felt unfairly treated by this tactic. Another participant had had the impression in a previous case that lawyers and magistrates had made deals about his sentence. He seriously doubted the honesty of the judge *and* his lawyer. Things such as these people drinking coffee together or carpooling may give rise to such impressions and suspicions.

"M'n advocaat, die zat gewoon met de onderzoeksrechter aan tafel koffie te drinken en die zat met hem in de auto. Ik weet niet hoor, maar tot hoever gaat het? Tot hoever gaat het?" (Male offender, robbery (respondent 27), non-participant)

"In mijn vorige zaak zei m'n advocaat 's ochtends 'zes tot acht jaar', en pats, ik kreeg zeven jaar. Dus dat was op voorhand besproken. En zo waren er wel meer van die toevalligheden zeg maar." (Male offender, robbery (respondent 27), non-participant)

One **survey statement** gauged the importance of honesty; the statement is "[it is important that] the judge will behave correctly, will be honest and will not lie". The only comment that was given with respect to this statement was that it is simply unimaginable for judges to lie. The evident nature of the statement may explain why few people felt a need to comment on it.

§2.3.2. Discussion

These results do not give rise to new insights into the theories of social justice under discussion in this dissertation.

§3. Performance

§3.1. Description of results

A number of participants indicated that a criminal justice system is indispensable for any society to function well, yet throughout the interviews the participants indicated many ways in which they think the system is flawed. **The time it takes to process a case** was by far the most mentioned element (twelve victims, four offenders). It was hard for the participants to understand that even when the case was clear and the offender had confessed, the proceedings took so long. The fact that trials often are spread out over multiple sessions was also heavily criticised.

"Ik zeg het, dat is een procedure die al meer dan een jaar en een half duurt, en dat blijft duren. Dan is dat weer voorkomen, dan zegt de advocaat van de andere sorry maar ik heb heel dat dossier nog niet, hup, uitstel, en dan moet je maanden erna terugkomen. Dat je zegt, hoe kan dat he?" (Male victim of intentional assault and battery (respondent 21), participant)

Participants mentioned different reasons for why exactly the slowness of the criminal justice system bothers them. First, victims' recovery process may be hampered when it takes a long time for the case to be processed and completed. If a victim recovers from the victimisation experience before the case is dealt with in court, the trial rips open old wounds.

"(…) en dan nu bijna een jaar later komt dat voor. Dus misschien dat die periode, dat dat wat sneller zou gaan. (…) Je bent er dan toch nog mee bezig en als dat dan rapper voorkomt, je bent nog aan het verwerken, als de rechter dan beslist dat en dat en dat moet de dader doen, dan kun je je daar misschien mee troosten óm het te verwerken. (…) En nu werd dat weer opgerakeld." (Female victim of intentional assault and battery (respondent 32), participant)

A second reason why victims are discontent about the slowness of the criminal justice system is that it allows offenders to continue their wrongdoings or to flee. The slowness of the system, then, is a breeding ground for a sense of impunity, some said. In a similar vein, victims believe offenders learn nothing from a sentence that is pronounced months or years after the facts.

"R1: *(vrouw van respondent)* (…) als zij mijn man nu zien zullen ze denken, schone meneer, daar is niks aan, maar hadden ze hem gezien de dag erna, dan verschiet je toch wel hoor.
R2: Ja, je bent bont en blauw en kan niet meer uit je ogen zien. Maar nu zeggen ze misschien, er is toch niks gebeurd." (Male victim of intentional assault and battery (respondent 12), non-participant)

"(…) je begint toch te denken, allez, mogen die nu gewoon ongestraft blijven rondlopen?" (Male victim of intentional assault and battery (respondent 12), non-participant)

"Ze werken niet rap genoeg op de bal. Als er iets gebeurt, probeer daar zo snel mogelijk iets aan te doen, iemand doet iets fout, neem die op, bekijk dat op dat moment en geef die een straf of zo, zodat hij de gevolgen op dat moment inziet. Als je die los laat, zoals bij mij ook, ja, wat heb ik dan als les geleerd?" (Male offender, intentional assault and battery (respondent 8), non-participant)

A third reason is a financial one: one victim said that his company had almost gone bankrupt because he had to wait so long to recover the money that had been stolen from him. A fourth reason is that victims have many questions but no one to ask these questions to until the case finally begins to move. A fifth reason mentioned for criticism about the criminal justice system's slowness is that it is not fair towards offenders to punish them months or even years after the facts, because in those months or years they may have gotten themselves together, changed their lifestyle and found a job, when suddenly all that is taken from them. This may well lead them astray again.

"Het klinkt misschien heel raar, maar het is niet fair ten opzichte van de daders ook niet vind ik, dat ze die zolang vrijlaten en misschien dat die terug op de goeie weg zijn of toch proberen en dat die dan terug geconfronteerd worden met 'ik heb dat toen gedaan', in plaats van die direct een straf uit te spreken." ((Wife of) male victim of intentional assault and battery (respondent 12), non-participant)

This concern was also voiced by offenders:

"Dan ben ik eenmaal volwassener beginnen denken, zo van zo kan ik niet blijven leven. Ik heb met alles gekapt, heb werk gezocht, (…) en dan begint het ineens, na een paar jaar. Voorkomen. Voorkomen. Voorkomen. Voorkomen. Gevangenisstraf. Gevangenisstraf." (Male offender, intentional assault and battery (respondent 8), non-participant)

"Allez ja, ik zeg het, ik zit nu ook straffen uit van 18 of 19 jaar geleden. Dat vind ik dan ook weer verkeerd aan justitie. Want je hebt dan ondertussen iets opgebouwd en ze pakken het u gewoon allemaal terug af." (Male offender, intentional assault and battery (respondent 31), participant)

Finally, according to one offender and a victim, the problem with the criminal proceedings taking so long is that one forgets the details about the crime; it becomes hard to recall the exact circumstances.

It should be mentioned that a few participants expressed understanding for why it takes so long for the criminal justice system to process cases, indicating that they realise that their case is not the only case to be dealt with and that crime rates are so high that the system cannot keep track. Yet this does not mean that the slowness of the system does not bother them.

"Het krioelt op straat van zo'n zaken. Het is van de andere kant niet makkelijk om ze allemaal op tijd te behandelen, dat kan ik geloven. Maar het irriteert de mensen." (Male victim of intentional assault and battery (respondent 12), non-participant)

Two participants said that it is a *good* thing that the trial does not immediately follow the offence, because the time in between offers one the chance to participate in mediation and to prepare oneself for the trial. A victim said that it would be too difficult for victims to face their offender(s) too soon.

"Je moet je toch kunnen voorbereiden op de zaak. En een beetje kalmeren en zo. En in die periode kun je dus met die mensen bemiddelen." (Male offender, fraud (respondent 33), participant)

"Op zich vind ik dat een goede timing. Omdat, als het meteen na de feiten is denk ik dat je daar nog niet aan toe bent, bijvoorbeeld als het nu twee weken na de feiten was dan had ik dat contact met hen niet aangedurfd." (Female victim of robbery (respondent 47), participant)

A second main theme within the performance category among victims was **responsibility**: four of them talked about whether or not the judicial authorities in their view had taken their responsibility. One of the victims said that because all members of the criminal justice system chain had taken their responsibility, she felt recognised as a victim and did not have any urge to take part in the criminal proceedings. From the quote below a link between being recognised as a victim and the need for participation can be detected, and also a relief on behalf of the victim that she did not *need* to take part in the criminal proceedings.

"Ik heb het gevoel dat alles heel duidelijk is en dat iedereen zijn verantwoordelijkheid heeft genomen naar die veroorzakers toe, en dat iedereen zijn ding doet in wat er nodig is om hen te 'straffen' of te confronteren met wat ze gedaan hebben. En doordat iedereen dat doet moet ik dat niet meer doen. En kan ik gewoon vertellen wat het voor mij teweeg gebracht heeft omdat niemand anders dat kan vertellen, maar ik heb niet het gevoel dat ik een deel van hun proces moet maken…" (Female victim of robbery (respondent 47), participant)

Yet two victims uttered negative remarks about the judicial authorities taking responsibility. They were disappointed about the strict separation of powers between different services and the limited

knowledge of the people working at each service. They had expected that the people working at the different services would have a broader knowledge of the system as a whole. Moreover, they said, all had shuffled responsibility to other services when concrete decisions needed to be taken.

"Ik moet wel zeggen, ieder heeft zijn bevoegdheid, en daar blijft het dan wel bij. Ik dacht dat (…) mensen hun gebied van kennis verder uitstrekte dan nu: die doet dat, en die doet dat, maar de bevoegdheid gaat niet verder." (Father of male victims of intentional assault and battery (respondent 6), non-participant)

"Op het moment dat ze verantwoordelijkheid moeten nemen, dat ze een standpunt moeten innemen, dan gaan ze in de fout. Dan geven ze de bal door aan de volgende. Maar zo geraak je er nooit." (Father of male victims of intentional assault and battery (respondent 6), non-participant)

The fact that the services failed to take a clear standpoint was a big thing to these victims, all the more because, as they said, all the persons they encountered had been friendly and understanding and had listened to them. The quote below suggests that this had raised the victims' hopes that they would finally bring a solution to their case. Yet the disillusionment about these people's performance seems to have struck these victims extra hard exactly because of these raised expectations.

"Maar als het erop aankomt om een verslag op te stellen en knopen door te hakken, dan falen ze. En daar ligt de teleurstelling. Niet in de manier waarop ze ons opgevangen hebben, niet in de manier waarop ze geluisterd hebben of begrip getoond hebben, daar zit het allemaal heel mooi en zijn het de juiste mensen op de juiste plaats. Maar het resultaat dat ze afleveren is te oppervlakkig. Ontgoochelend. Ze geven het gevoel dat ze begrip hebben (…) dus je zit altijd met die hoop, en dan krijg je dat verslag en dan zijn we weer niet verder geholpen." (Father of male victims of intentional assault and battery (respondent 6), non-participant)

Related to this, no less than ten victims charged the different services making up the criminal justice system chain with **a lack of cooperation**, which makes this a topic that merits more consideration. Victims first of all experienced that the information flow between different services was deficient. A spitting example is that of the offender who while in prison received the letter from the public prosecutor informing him about the possibility of mediation at home (I discuss this example here because it was mentioned by the victim's mother). A second breeding ground for victims' observations that there is not much cooperation between different services is that victims in each step of the proceedings meet new people to whom they have to tell their story over and over again. Not only is this last aspect difficult for victims, the strict separation of powers and the lack of cooperation between services also makes victims lose oversight.

"De diensten, die werken allemaal apart van elkaar, het is heel moeilijk om die diensten samen te laten werken. (…) Bijvoorbeeld het parket, daar weet ik iemand die mijn dossier opvolgt, dan heb ik iemand van slachtofferhulp die bezig is voor mij, dan heb ik een juriste die bezig is voor mij, dan heb ik (bemiddelaar) die bezig is, dat zijn allemaal zo verschillende mensen, en het is heel moeilijk om daar één structuur in te krijgen. Dat is elke keer terug heel uw verhaal (…)" (Female victim of stalking (respondent 18), non-participant)

A third thing that leads victims to report that cooperation between different services is lacking is that even though victims have reported the crime to the police, they have to go to yet another service (*i.e.* the prosecutor's office) to register as injured person (which is the status they need to take in order to be informed about the main decisions made during the criminal proceedings). It was considered absurd that the prosecutor's office is not informed by the police about who has reported a crime automatically, and that victims need to inform the authorities about their victimisation twice.

"Je bent dan slachtoffer, dan heb je eerst je verklaring, dan krijg je een papiertje, daarmee kun je naar een of andere dienst waar je dan zegt 'ik was een slachtoffer', ja dat weten ze dan blijkbaar nog niet." (Male victim of violent robbery (respondent 49), participant)

Other interview fragments relating to performance concerned the authorities' **lack of knowledge about particular cases** (e.g. the offender in prison who had received letters from the public prosecutor at his home address) and **whether or not the judicial authorities had conducted a good investigation**. This last aspect was described under the category 'fact-based decision making'.

§3.2. Discussion

The relationship between performance, trust and the need for participation

One final word on performance is about the victim who said that because all police officers and magistrates had according to her done their job and taken their responsibility, she did not feel any need to keep them on their toes and see to it that they performed their tasks. In other words, the fact that the authorities performed well increased her level of trust in them, which in turn decreased her need to become involved in the criminal proceedings. In justice research terms, what we see is that performance has an influence on voice that is mediated by trust. If the authorities perform well, trust increases and need for voice decreases. This result can be related to those of De Cremer and Tyler (2007), who found that trust in authorities moderates the effect of procedural fairness on people's willingness to cooperate with authorities, except that the result reported here relates to how trust in authorities moderates the effect of procedural fairness not on willingness to cooperate but on the need for personal involvement in criminal proceedings.

The relationship between respectful treatment and expectations on performance

Above I described how the parents of two young victims had built high hopes that the criminal authorities would finally bring an end to their struggle based on the justice personnel's considerate manners. There may, then, be a relationship between being treated with respect ('standing') and expectations on performance. The danger with a view to perceptions of procedural justice is that those expectations may be dashed and the positive effect of respect for standing on procedural justice may be neutralised by the negative perceptions about performance. This problem of heightened expectations is not easily solved; it is a problem that has been encountered in other areas of study too. Erez and Tontodonato (1992) and Erez *et al.* (1994), for example, found that victims who had been offered an opportunity for input in the criminal proceedings by means of a victim impact statement and thought that their input was ignored were less satisfied with the criminal justice system than those who never had had the expectation that their input would be validated. It is worth noting this relation between 'being treated with respect for dignity' and expectations about performance, the risk for disappointment and the consequence for perceptions of procedural justice.

SECTION III. A MODEL OF EVALUATIONS OF ENCOUNTERS WITH THE CRIMINAL JUSTICE SYSTEM PRE-TRIAL

At the end of this chapter it is appropriate to summarise the results of the study with respect to the determinants of evaluations of encounters with the police and the judiciary pre-trial. I chose to do this by creating a model. The model below (see Figure V-I on this page) presents the three main determinants of victims' and offenders' opinions on those encounters. These are (1) perceptions of standing, (2) perceptions of neutrality and (3) perceptions of the way the authorities have performed their jobs. All are determinants of perceptions of procedural justice, but performance has an indirect effect, through the effect that perceptions of performance have on perceptions of standing and neutrality. The findings of the current study as such confirm the importance of standing and neutrality as factors determining perceptions of procedural justice, but did lead me to exclude the factor trust. The exact place of the factor trust in a model of procedural justice will become clear as the final models emanating from this study are presented in the conclusion (chapter nine).

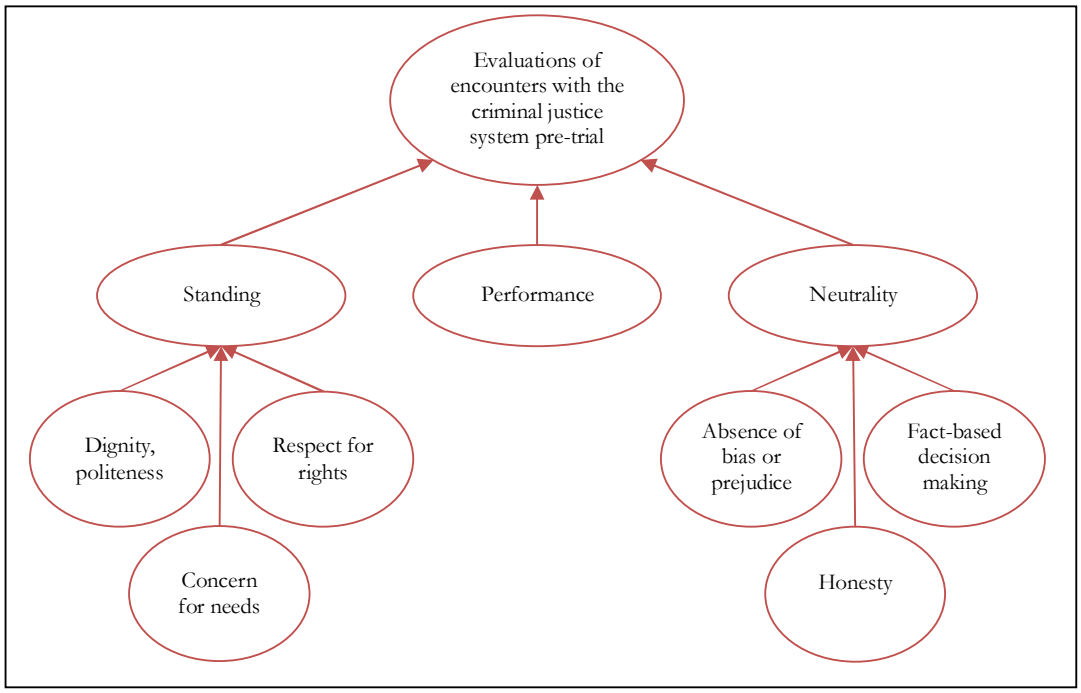

Figure V-I: A model of evaluations of encounters with the police and the judiciary pre-trial

Chapter VI. PERCEPTIONS OF FAIRNESS AND JUSTICE IN CRIMINAL TRIALS: THE POST-TRIAL PHASE

In this chapter I will present the results of the second wave interviews. Again the aim is to determine which elements determined the participants' evaluations of their encounters with the authorities dealing with the criminal case in which they are involved. The focus this time was the experience in court. In the first section of the chapter the results are presented and discussed; in the second section I will again present a model on how the participants evaluated their encounter with the authorities, this time focusing on the criminal justice system.

SECTION I. DESCRIPTION OF RESULTS AND DISCUSSION

When analysing how people felt about an encounter with the criminal justice system, I found five types of information to be important, *i.e.* (1) information about standing (§1), (2) information about neutrality (§2), (3) information about the quality of judges' work (performance) (§3), (4) the court setting and the rules governing trials (§4) and (5) the behaviour of the opponent party in court (§5).

§1. Standing

§1.1. Dignity, politeness

§1.1.1. Description of results

During the analysis of the second wave interviews, attention was paid to elements mentioned by the respondents that related to respect for them as a person, to their dignity and to the attitude of officials. An element mentioned by one victim was **recognition of victim status**. It resulted from the judge conveying a message of understanding of what she had been through and confirming the seriousness of the facts. The respondent attested that she had more self-confidence now that she had met a judge who did not blame her for what happened but on the contrary expressed understanding.

"Ervoor was het zo echt meer zoals de advocaat deed zo van, de ouders zijn de slechteriken en die hebben geen goede opvoeding gegeven (…). Dus dat heb ik altijd moeten aanhoren en telkens opnieuw en nu dat was echt iets, een heel ander gevoel." (Mother of female victim of sexual abuse (respondent 23), non-participant)

Two elements infringing on the offenders' feelings of standing were the use of **handcuffs** and the fact that **judges are seated on a raised bench**. As to the first aspect, two offenders declared that being handcuffed makes one feel like one's status is reduced to that of a beast. The second aspect according to one respondent makes one feel inferior to the judge. Yet other respondents talking about judges' physical position vis-à-vis litigants did not experience it as problematic.

"*(over het geboeid binnengebracht worden in een rechtszaal)* Daar stoor ik mij het meest aan van allemaal, waarom, het geeft zo een beeld zo van, zie eens wat een bandiet, wat een schurk, wat een ik-weet-niet-wat dat we hier binnenbrengen, en dan gaan ze over mij oordelen als mens maar dan word je daar binnengebracht gelijk een beest." (Male offender, sexual abuse (respondent 53), participant)

The respondents were asked to describe **the judge and the public prosecutor** in their own words. As for *judges*, offenders described them in terms of whether they had been neutral on the one hand and of whether they had been understanding, offensive, respectful and correct, patronising or friendly on the other hand, which are all issues related to judges' respect for the people in front of them. Overall, offenders were positive about the judge they had encountered; the two offenders who were truly dissatisfied about the judge mentioned that the judge was a cold person who had never tried to understand their position and was prejudiced. Note, first, that offenders were not offended by judges reprimanding them, as long as the disapproval of their behaviour was expressed in respectful terms, and, second, that an offender said that people who appear before a judge several times on end because of committing several crimes lose the right to be treated with respect.

"Hij zei, 'mr X., dat mag niet meer gebeuren he'. 'Ik ga je niet meer zien hier he'. Zoiets. Dat was goed eigenlijk he." (Male offender, fraud (respondent 33), participant)

"V: Maar wat vond je dan van die rechters op de zitting zelf?
R: Euhm… Gesloten en sowieso al een mening. Een mening op voorhand." (Male offender, intentional assault and battery (respondent 8), non-participant)

Victims too when evaluating judges talked about understanding and friendliness and thus about issues pertaining to receiving respect for one's dignity, but added firmness towards the offender and likewise attached considerable importance to the judge reprimanding the offender publicly. In other words, victims spontaneously brought up how the judge had behaved towards the offender, whereas offenders only considered the judge's behaviour towards themselves. The majority of victims were content about the judge, those who were not were so particularly because the judge had not been listening carefully during the trial or had not reprimanded the offender. There was no notable difference between victims who acted as a party in the process (civil party) and those who did not.

"Die hamerde erop van jongen, wat je gedaan hebt, en het is niet de eerste keer… allez, ze hamerde er wel op dat hij serieus in de fout gegaan was." (Female victim of rape (respondent 38), participant)

When talking about the *prosecutor* both victims and offenders talked as much about the prosecutor's sentence demand than about his/her attitude towards them. Victims also took into account whether the prosecutor had reprimanded the offender.

"De eerste keer vond ik haar vrij stellig uit de hoek komen met de gevraagde straf. Want de advocaat vroeg voorwaardelijke straffen, die procureur vroeg effectieve gevangenisstraf in eerste instantie." (Father of male victims of intentional assault and battery (respondent 6), non-participant)

In seven interviews evidence was found that **litigants build expectations about the judgement on the basis of the judge's attitude towards the offender**. When the judge behaves severe towards the offender in court, litigants expect the judgement to likewise be severe. Also, people are frustrated in case the judge's behaviour does not allow predicting the judgement, as the quotes below show.

"Toen die echt niet wou stoppen, dat die zei van nu heb ik er genoeg van en dat ze haar boeken sloot. Toen dacht ik wel van oei, nu gaat het hier wel wat zijn, een zware, allez ja, omdat ze ineens alles sloot, van oei wat gaat dat voor straf hier worden voor hem." (Female victim of rape (respondent 38), participant)

"Dat is iemand die op zijn punt stond, van kijk dat is mijn zaal hier, ik heb het hier voor het zeggen, je mag je zeg doen maar ga er niet over. En naar het einde van de zitting toe sloeg ze weer helemaal om. (…) Dan was ze terug meegaander. Eigenlijk heb ik daar een dubbel gevoel over: je weet niet goed wat je ervan kunt verwachten of wat je eraan hebt." (Male offender, intentional assault and battery (respondent 31), participant)

A last finding concerns **the degree to which one can bear experiencing a lack of respect** in court. A victim had been told by her lawyer that chances were high that the judge would treat her harshly because of the fact that she was partly responsible for what had happened. But she had leaned on the fact that none of the friends or family members who knew what had happened had failed her. She said that their support she would hold on to in case the judge would treat her badly.

"Er zijn nu andere mensen die het ook weten en die hebben mij, ik bedoel, de mensen die het weten is de korte kring van vrienden en die hebben mij niet laten vallen, dus, pff, het kan mij niet schelen wat er daar gezegd wordt." (Mother of female victim of sexual abuse (respondent 50), participant)

Four **survey statements** elicited some – but not many – comments on the importance of being treated with respect by judges. The statements were: (1) "[it is important that] the judge will treat me with respect, friendly and politely", (2) "[it is important that] the judge will respect my dignity and will not say hurtful things", (3) "[it is important that] the judge will give me the feeling that he is taking me seriously" and (4) "[it is important that] the judge will not behave pretentiously or give me a feeling of inferiority". The analysis did not show significant differences between victims' and offenders' opinions on the statements.

Someone to the second statement replied that all depends on the gravity of the offence, another one pointed to the difficulty of striking a balance between reprimanding the offender and being polite. As for the fourth statement, one offender referred to the fact that judges are seated on raised benches and another one to the fact that judges are highly educated to explain that it is impossible not to have a feeling of inferiority.

§1.1.2. Discussion

The importance of good contacts with magistrates

More elements pertaining to receiving respect for one's dignity were encountered throughout the first wave interviews, which concentrated on participants' encounters with the police, than throughout the second wave interviews. At first sight this finding confirms one by Wemmers (1996), who found that citizens are more concerned with issues pertaining to respect and dignity in encounters with the police than in encounters with the courts. Yet though our respondents spoke much more of how they were treated by police officers than about the attitude of magistrates in court, I cannot say with certainty that receiving respect from judges is less *important* than receiving respect from the police. The discussions about the attitude of judges were shorter and less in-depth than those about the attitude of the police, but the participants likewise had had more and more in-depth personal contacts with police officers than with magistrates. This in itself could explain why more in-depth and more diverse remarks about the quality of the interpersonal relationship with the police were found than about the quality of the interpersonal relationship with magistrates.

Interpersonal treatment communicates about the outcome

It was found that litigants derive outcome expectations from the attitude of the judge towards the offender. This finding corroborates that of Heuer *et al.* (2002), who argued that information about standing informs people not only about group standing but also about the chance of obtaining a preferred outcome. The current study supports that argument; the findings suggest indeed that when an offender has been addressed in a severe manner by the judge, people expect that (s)he will pronounce a severe sentence. If the outcome does not match this expectation this leaves them puzzled. Note that this does not by definition imply that they consider the outcome *unfair*.

It was also observed that people who cannot from the judge's attitude deduct information about the outcome to be expected experience frustration. An explanation could be that people after waiting a long time for the trial believe the trial will finally relieve their uncertainty. This could explain why they have such need for being able to derive outcome information from judges' attitudes. This finding could contribute to research on fairness and uncertainty. Remember that it has been found

that fairness information matters to people especially in situations of uncertainty. Yet studies that have looked into this issue have only looked into the degree to which people are sensitive to manipulations of voice under conditions of uncertainty as opposed to other conditions. Possibly, people are also more sensitive to being treated with respect in such situations, and the reason could be that this information communicates about the likelihood of the procedure leading to certain outcomes. This is a speculative argument, but it can inspire future research.

The rationale for the importance of being treated with respect

The finding that a victim's self-confidence had increased because of a judge expressing understanding for her position confirms the group-value model's assertion that fairness matters because of the importance of group status. In case the judge conveys a message of acknowledgement to the victim and takes the case seriously, a trial could be a ceremony where the victim's status as a worthy citizen is confirmed. Results of interviews with Belgian victims reported by Lemonne and Vanfraechem (2010) contradict this stance: the victims they spoke to in general experienced a trial as a bad play, not at all as a ritual of recognition. Yet the victims participating in the current study, thought they enumerated a number of flaws marking trials, in general were not dissatisfied about their experience in court. None of them expressed regrets about having attended the trial or said that it had been a negative experience. Most were neutral about what it had meant for them.

Note that the accounts of the offenders who had been handcuffed when entering court and the fact that when asked to talk about the judge, most respondents referred to aspects relating to the judge's attitude, also point to the importance of group status concerns for explaining the significance of being treated with respect for dignity.

Respectful treatment - expressing censure

Victims as said appreciate the judge or prosecutor reprimanding the offender. Yet they have also said that each human being is entitled to be treated with respect. Some victims have difficulty to reconcile these seemingly conflicting feelings, but offenders' stories show that the two can go together. The fact that judges need to express censure does not imply that they need to use disrespectful language.

A cushion of support against disrespectful treatment

The findings furthermore suggest that the degree to which people mind being treated in an impolite manner by group authorities may depend upon the degree to which peers (fellow group members) give them the feeling that they are a valuable member of their social group. One victim said that experiencing respect from one's loved ones provides for a buffer against the pain resulting from

disrespectful treatment by authorities. In terms of the group-value model of procedural justice, it seems that when the need for belonging is fulfilled by other group members, it may be less hard to cope with unfair treatment by authorities. One caveat to this hypothesis is that in the end this victim had no complaints about how she had been treated in court, which means that it is not clear whether she would indeed have held on to the support of her friends and family in case she had in reality been treated in a disrespectful manner.

§1.2. Respect for rights

§1.2.1. Description of results

The interviews showed one reference to a *perceived* lack of respect for rights. One offender claimed that he had been **handcuffed in a non-legal way**, in that he had been handcuffed on his back instead of on his belly when he was taken to and into the courtroom. Article 37 of the Belgian law on Police Office[40] specifies *when* the police may proceed to handcuff a citizen, but does not provide information about *how* that may be done, nor do the parliamentary preparations of the law. There are no other legal regulations on the use of handcuffs nor is there any case law the matter. Training handbooks spell out that people are best handcuffed on the back (Bruggeman, 2006). This means that the respondent was wrong.

A remark uttered by two respondents concerned the professionalism of the administrative staff of the court responsible for serving people who come to fetch (a copy of) the judgement. In both cases, the clerks had been indiscrete, breaching their **professional secrecy** by informing the respondent of the judgement in a way not allowed.

§1.2.2. Discussion

The findings on respect for rights do not lead to new insights into the theories of social justice other than what has been described about the perceptions of breaches of rights in the previous chapter.

§1.3. Concern for needs

§1.3.1. Description of results

The needs that came to the fore in the interviews were (1) emotional needs, (2) practical needs, and (3) the need for participation. In offender interviews only references to the third need were found.

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[40] Wet 5 augustus 1992 op het Politieambt, *B.S.* 22 december 1992.

Emotional needs

As for emotional needs, a few victims expressed a need for more support before, during and after the trial. Three victims suggested that more should be done to inform victims of the services available to them. Two of them said that victims should be accompanied to court by professionals in case they do not have anyone else to accompany them.[41] Moreover, there seems to be a need for aftercare, that is, for being able to talk about one's experience to someone after the trial[42]. Also, there is a need for a service that victims can go to with the judgement for someone to explain what it actually means.

"Ook dat vonnis, mocht je dat vonnis nu krijgen, is er niemand die dat uitlegt, die zegt wat daar werkelijk in staat. (…) Al die artikeltjes en die woorden en die zinnen daar kan ik niet aan uit." (Mother of female victim of sexual abuse (respondent 23), non-participant)

Practical needs

One need was coded under the category 'practical needs', *i.e.* **the need for an interpreter** to be present when the trial is conducted in another language than one's mother tongue. One person had been faced with this problem; he was very satisfied that an interpreter had been called to assist him.

The need for participation

The need for ***active*** **participation** was much more present in the second wave interviews than in the interviews before trial, which were dominated by the need for information (*passive* involvement). Participants in general were not dissatisfied about the possibilities for participation in the criminal proceedings, but did mention a number of conditions that impeded them from using these opportunities to a full extent. There seem to be quite a few **elements that inhibit litigants from speaking in court**, or at least make it difficult to do so.

Firstly, five offenders said that they feared that expressing their opinion would have a negative effect on the outcome. Two offenders with a previous experience with the criminal courts argued that they experienced on prior occasions that the verdict and sentence depend not only on suspects' behaviour but also on their eagerness to defend themselves. They therefore argued that sometimes it is better not to talk in court. One said: "the more you argue, the more resistant the judge will get". Therefore it was said that with a view to the sentence it is better sometimes to remain silent.

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[41] In Belgium, victim support workers working in the Houses of Justice (*Justitiehuizen/Maisons de Justice*) are available to accompany victims to a trial, but the two victims cited here apparently were not aware of this.

[42] Two victims said that they were particularly happy about having participated in the current study exactly because it felt like a kind of aftercare: it allowed them to talk about their experience and ventilate their feelings.

"Mijn advocaat heeft wel gezegd van probeer zo vriendelijk mogelijk, probeer u een beetje in te houden. (…) Ik ga nu mijn vensters niet gaan ingooien en hier nog zes maand langer zitten gewoon omdat ik mijn mond niet kan houden he. Dat zou dom zijn." (Male offender, intentional assault and battery (respondent 31), participant)

Secondly, three victims and an offender mentioned that emotions make it difficult to speak in court.

"Niet iedereen durft dat he op de rechtbank. En ik weet niet of ze dat weten." (Female victim of rape (respondent 38), participant)

"Je bent zo emotioneel geladen, (…) ik bedoel, je bent daar over een straf bezig en zo he, dat is zo'n gevoelig onderwerp dat de dingen die je soms wat in uw kop hebt, er niet direct uitkomen." (Male offender, intentional assault and battery (respondent 8), non-participant)

A third category of reasons for not actively participating in the trial pertain to the organisation of the criminal justice system and the courts. Some people mentioned that (a) *the criminal justice system is overly complex*, making it near impossible to participate.

"Mij lijkt dat zo'n ontoegankelijk bastion zo. (…) En dat creëert wel een beeld dat je er eigenlijk gewoon niet moet aan denken of niet moet proberen om dat zelf in handen te nemen en uw zaak te verdedigen." (Male victim of theft (respondent 37), non-participant)

The presence of an audience in court (b) too (court hearings as a rule are open to the public) made litigants more reluctant to tell their story, the main reason for which is that other people have no business with their life. After one of the participants had said that he would prefer trials to be organised without an audience present this suggestion was verified during interviews with subsequent respondents, who without exception embraced the idea. People would feel more comfortable to participate in trials if these would take place without a public being present.

"Het is ook heel moeilijk van bepaalde gevoelens die je hebt naar buiten te uiten als je daar met mensen achter u zit die totaal niks met u te maken hebben, dat is heel moeilijk om zo'n dingen naar voren te brengen he. Weet je, als je dat nu achter gesloten deuren zou een beetje mogen en face en face tegen die rechter een beetje, dat zou iets gemakkelijker zijn." (Male offender, intentional assault and battery (respondent 8), non-participant)

Next is the fact that victims are *not fully aware of their rights and the possibilities for participation* (c). This prevents them from actively participating in the trial *and* from participation in the criminal proceedings before and after the trial (e.g. not knowing where to go to get a copy of the judgement).

"Ik denk dat die informatie, ook over hoe dat allemaal in elkaar gaat, wij zijn nu eigenlijk iedere keer goed op de hoogte gebracht maar ik kan mij inbeelden dat dat ook, ja, soms kolossaal verkeerd kan gaan. (…) Als jij niet op de hoogte gesteld wordt van dat gaat zus of dat gaat zo verlopen, dan denk ik dat dat heel, dat dat heel moeilijk is." (Mother of female victim of sexual abuse (respondent 50), participant)

Another element is the *court setting* (d), both in terms of architecture and in terms of procedures. Starting with the first, courtrooms in general were perceived as impressive, overwhelming rooms. This particular courtroom architecture added to the nervousness of quite some victims. Some said that for this particular reason they did not dare to speak in court. Two respondents (one victim and one offender) came up with an alternative, *i.e.* to keep trials in everyday office-like rooms, where all parties and the judge sit at a table. Again this proposal was verified with other respondents, who were mixed about the idea: they generally said that it would be a good thing for victims but not for offenders; it was considered a good thing that the formality of a courtroom intimidates offenders.

"Ik zou al geruster zijn mochten we, zoals met de vrederechter, in een klein lokaaltje kunnen zitten. Maar niet in een rechtbank, met een rechter, hoe het er ook mag uitzien." (Female victim of stalking (respondent 2), non-participant)

"Allez, een gezag, dat heeft met vanalles te maken, veel perceptie en zo. Dus. Ik kan mij voorstellen, ja, misschien dat dat voor sommigen niet echt een goede zaak zou zijn dat iedereen op gelijke hoogte zou zitten." (Male victim of theft (respondent 37), non-participant)

As for courtroom procedures, the fact that there is *no time in court to tell one's story into detail* (e) was criticised. One person mentioned the awareness that the longer he speaks, the longer others have to wait for their case to start. Some complained that it is not allowed in court to interrupt other people. Though the survey statement that gauged the extent to which participants feel that it should be allowed to intervene when one feels like it generally was rejected (see below), four participants did say that there had been moments during the trial at which they would have liked to intervene.

"Je hebt daar echt het gevoel echt zo van 'allez kom zeg vlug wat je een beetje wil zeggen' en hup. (…) Je hebt zo precies het gevoel dat die elk moment gaat zeggen, ok, *next*." (Male offender, intentional assault and battery (respondent 8), non-participant)

"Ik heb nu niet het gevoel gehad dat er daar *(op de zitting)* heel veel ruimte was (…). Op uw brief staat het is tussen negen en twaalf en om twaalf uur is het aan u en er zijn er al zoveel gepasseerd en er zijn nog zoveel wachtenden, dan weet jij ook van, allez, dat gaat niet stimuleren om te zeggen van, ik wil hier graag eens een half uurtje iets vertellen." (Male victim of theft (respondent 37), non-participant)

Summarising, factors that may impede people from actively participating in trials are: (1) fear for a harsher sentence; (2) emotions; (3) the complexity of the criminal justice system; (4) the presence of an audience in court; (5) a lack of knowledge about one's rights and opportunities for participation, (6) the court setting and (7) courtroom procedures.

The participants that *had* taken the floor in court were asked whether they felt that they had been given sufficient opportunity to give their account of the facts. Most were positive, four respondents had after the trial been wondering whether they should have taken another lawyer or whether they should have said other things in court than they had, and one offender and one victim were manifestly discontent about the opportunity they had had to speak. The victim complained that her lawyer had not been given the time to state her point of view because the judge had become tired of the opponent party's lawyer acting irritating and suddenly closed the session. The offender complained that the judge was constantly interrupting her. But people differ. Another offender who was faced with a judge constantly interrupting him believed that that was an indication that the judge was well-prepared and had a thorough knowledge of the file, which he very much appreciated. Also, one participant had not had much time to have a say in court but added: "Mais enfin, le bon résultat est là" ("But, well, the result is good"). The outcome he was satisfied with, so he did not want to complain about the lack of time for speaking in court.

"En, pff, die rechter reageerde zo op mij van *(met fijn sarcastisch stemmetje)* 'ga maar zitten juffrouw, ik weet genoeg', weet je, zo heel kortaf (…). Dat je soms misschien toch een klein beetje voelt dat je iets of iemand bent, of dat er toch naar u geluisterd wordt tegenover dat je zo wordt afgewimpeld." (Female offender, intentional and unintentional assault and battery (respondent 46), participant)

In order to find out whether having had the chance to speak in court (voice) has an effect on perceptions of fairness irrespective of whether it has an influence on the outcome respondents were asked whether they believed that what they had said had had any **influence**. The results are mixed: some indicated that it is good to be able to speak one's mind no matter whether it influences the outcome of the trial, whereas others said that it had been completely useless to go to the trial as nothing they had said had had an influence. Three offenders were not sure that they would attend the trial a next time, as in their opinion their presence had not made any difference. The general feeling is that people do want what they have said to be taken into account by the judge.

"Je mag dan aan het woord komen, zeggen wat er op je lever ligt bij wijze van spreken, en dan denk je... Maar het is precies dat ze het niet meenemen of dat het een verplicht nummertje is. (…) Dus je blijft gewoon met een wrang gevoel zitten." (Father of male victims of intentional assault and battery (respondent 6), non-participant)

"Je moet gehoord worden. Je moet je verhaal kunnen doen (…). Het is belangrijk dat er iets mee gebeurt, dat het niet gewoon is van vertel het maar en hup, maar dat je ook het gevoel krijgt dat er iets mee gedaan wordt." (Male victim of theft (respondent 37), non-participant)

Two offenders explained how the fact that the judge did not give them a decent chance to tell their side of the story gave them the feeling that the judge was prejudiced.

"Die laatste rechter (…) heeft mij ook de kans gegeven om iets te bespreken, zij is niet direct op mij ingegaan, maar die eerste rechter wel. Die eerste rechter dat was iemand sowieso, ik had dat gevoel, die heeft sowieso al een vooroordeel naar mij toe." (Male offender, intentional assault and battery (respondent 8), non-participant)

The results furthermore suggest that to victims it is more important to be heard by the judge than to be heard by the offender. Obviously, when victims address the judge, the offender automatically hears what is said, but only one of the victims said that she wanted to address the offenders in person in court. She wanted to tell them how much harm they had caused in order to make them realise what they had done.[43] In general, then, it is important to victims that the judge reprimands the offender, but they seem to have little need to speak directly to the perpetrator in court themselves.

One could hypothesise that there is a difference between victims who did and those who did not participate in mediation, as the first had already been able to convey messages to the offender. I found indeed that those who participated in mediation have less need to attend the trial and speak in court. Yet the reasons given for not participating in the trial relate just as well to the fact that the case had been closed on a financial level than on an emotional level; also, among those who said that the case was closed on an emotional level was also someone who had not been able to speak her mind to the offender (she had only talked to a mediator). I can therefore not draw conclusions about this.

The respondents were asked to judge three **survey statements** gauging their need for **process control**. These were: (1) "[it is important that] I will be able to exert some control over the proceedings"; (2) "[it is important that] I will have a say on the court proceedings" and (3) "[it is important that] I will be able to intervene if I believe the procedures are not being applied correctly". Respondents in general agreed with how trials proceed and with the fact that it is the judge who decides who is allowed to speak and who is not, but one did say that he would like to bring a change to all the odds and ends that come with a trial (he called it "a big posh fair", referring to the robes, the raised benches, and the need to rise when the judge enters or leaves the courtroom).

[43] In the end, she chose not to attend the trial because she did not want to know the offenders' faces.

"Neen, dat is niet belangrijk, ik zou ook niet graag hebben dat ze zich bij mij kwamen moeien hoe ik mijn werk moet doen he. Dat is toch zo? Die rechter weet het best hoe hij zijn job moet doen." (Female victim of intentional assault and battery (respondent 32), participant)

"Ik denk dat dat ook een soepke zou worden. Ik weet het echt niet. Dat is heel moeilijk." (Male victim of violent robbery (respondent 49), participant)

Still it was considered important to be able to intervene when one feels that certain rules are trampled. However, some said that ordinary citizens do not possess the knowledge necessary to recognise those situations in which procedures are not respected.

"Dat je u kunt verzetten of dat je kunt zeggen van ik vind dat niet correct. (…) Ik zeg wel op een beleefde manier he, meneer de rechter, mag ik iets toelichten of ik vind dat niet correct daarom of daarom. Je moet altijd respect hebben voor die persoon, dat wel." (Mother of female victim of sexual abuse (respondent 23), non-participant)

Next are the **survey statements** on the need for **voice and participation** in the trial. The statements were: (1) "[it is important that] I will have ample opportunity to state my position and clarify my wishes"; (2) "[it is important that] the judge will give me feedback after I have spoken"; (3) "[it is important that] I will be able to speak to the judge in person if I wish to do so"; (4) "[it is important that] I will be allowed to spontaneously address the judge if I have a question" and (5) "[it is important that] the judge will allow me to speak on my request".

The first statement was considered very important; one victim explained that it is good that judges hear the individuals involved in person, because there is a difference between how one is portrayed in documents and how one comes across in person.

"Hetgeen wat je dan zegt is echt hetgeen wat je, als de rechter dat echt hoort van de mensen zelf. Anders is het toch maar geschreven en getypt door de politie (…) je communiceert echt en dan heb je een ander beeld erover. En de rechter zelf denk ik." (Male victim of theft (respondent 29), non-participant)

The statement on feedback elicited comments that refer to acknowledgement: the judge confirming that the victim has been through a lot, or simply confirming that (s)he is listening, is highly valued.

"Ah dat is ook belangrijk he, dat wel. Mocht die mij gehoord hebben, dat die zegt 'ja madam dat is 't een en 't ander dat je meegemaakt hebt'." (Female victim of intentional assault and battery (respondent 32), participant)

Opinions on the statement asking whether one would like to be able to speak to the judge in private again were mixed. Also, whereas some considered speaking to the judge before the trial, others considered opportunities for talking to the judge after the judgement has been pronounced. Reasons people gave for feeling *no* need to talk to the judge after the trial were: (1) the feeling that nothing can be achieved with talking to the judge after the trial: it will not affect the outcome anymore (N = 3); (2) that one is fed up with everything that comes with a trial and does not want to spend any more time or energy on it (N = 2) and (3) that the judge probably has good reasons for the judgement (N = 1). Reasons for not speaking to the judge before the trial were (1) that everything there is to know about the case is included in the file (N = 1) and (2) that judges' neutrality would be affected (N = 3).

Those who would want to talk to the judge if that were possible said that they would do so before trial (1) in order to explain to the judge what exactly had happened, so (s)he would be fully informed, and this in a quite, private setting (N = 3) and (2) because they would feel more comfortable about going to court if they had become acquainted with the judge before (N = 1). Those who were in favour of allowing litigants to talk to the judge after the trial were so because (1) it would allow them to do away with lies told by the other party (N = 1), (2) one often leaves the courtroom with questions or remarks on what happened (N = 1) and (3) it would allow asking questions about how the investigation was conducted, how they discovered who committed the offence, what life in prison will be like for the offenders, etcetera (N = 1).

"Non, ça c'est pas équitable he. C'est très dangereux ça. Même si c'est pour les deux. Hors de question." (Male victim of intentional assault and battery (respondent 3), participant)

"Ik zou een beetje nieuwsgierig zijn over hoe dat allemaal gaat, wat er gebeurt in de gevangenis, hoe ze dat eigenlijk gevonden hebben, hoe de procedure in elkaar heeft gezeten, hoe ze die linken gelegd hebben,…" (Female victim of burglary and theft (respondent 52), non-participant)

The last two statements gauged the extent to which litigants feel that it should be allowed to spontaneously address the judge and to speak on one's own account. The majority said that it is neither feasible nor desirable that litigants are allowed to intervene whenever they feel like doing so. The courtroom, so they said, would turn into – I quote the exact words used – a marketplace, a circus, a rat's nest or a dovecote. Also, several people said, time to tell one's story is provided to every participant anyway, so there is no need to interrupt others. The respondents did say that litigants should be granted the opportunity to respectfully ask the judge if they can add something at a later moment. The judge can then decide about the exact time when the litigant is allowed to speak.

"Ik snap dat ook, je moet daar niet door elkaar gaan liggen roepen en zo. En als er ene bezig is en ik heb daar een vraag over, dat ik daar niet in één keer moet tussenvliegen. Dat wel, maar ik vind wel dat ik mijn vraag moet kunnen stellen, dat ik die kans moet krijgen." (Male offender, intentional assault and battery (respondent 34), participant)

I will finish the part on concern for needs with a short discussion of elements coded under **'passive involvement'**, that is, elements that relate to the degree to which people are informed about the proceedings and about the judgement. Victims especially (N = 11) said that they had not received sufficient information for them to be able to stay up to date with the proceedings or to be sufficiently prepared for what would happen in court, which in some cases is the cause for not participating more actively in the proceedings. Offenders did not complain about a lack of information at this stage of the proceedings. People were more satisfied with the police than with the criminal authorities when it comes to providing litigants with information.

"Wel ik denk, de politie heeft heel veel aandacht voor het slachtoffer. Maar justitie niet. Bijvoorbeeld euh, het is dankzij u denk ik dat wij ons aangegeven hebben als burgerlijke partij. En de bemiddeling. Dus had die bemiddeling daar niet geweest, wij zouden dat niet geweten hebben, wij zouden nooit verwittigd geweest zijn van justitie dat er een rechtszitting was. Dat is nu toch wel… Ik vind dat beneden alle peil." (Male victim of burglary and theft (respondent 51), non-participant)

Some participants pointed a finger at the criminal justice system for not automatically informing them about the outcome of the trial. In Belgium, victims who are not a civil party in the proceedings are not automatically informed of the outcome of the trial; they need to go to the registry of the court to learn the verdict. Six victims and one offender mentioned that it is not correct that litigants do not automatically receive the judgement, for example through mail, and for free. Also, receiving the copy involves a lot of paperwork and two victims said that the language used in judgements prevents them from fully understanding the judgement and its concrete implications.

"V: Hoe blijf je nu achter?
R: Euhm, een beetje in de steek gelaten. Zo… qua justitie dan he. Dat wij eigenlijk via de advocaat moeten horen van, wat zijn straf is, maar dat je zelf geen papieren en zo in huis krijgt en zelf nergens terecht kunt." (Female victim of rape (respondent 38), participant)

A further note on receiving information about the progress of the case is the following: victims said that the fact that one does not hear from the authorities about the case conveys the impression that these are not working on it. When nothing is *seen* to be done, people think that nothing is done indeed. For example, those victims who do not register as injured person or civil party are not

informed when the case is brought to court. These people believe impunity reigns, whereas it could be that the offenders *have* been summoned.

"Dat geeft het gevoel: ze zijn daar mee bezig en men doet er iets mee. En als je niks hoort, dan zeg je van ja, straffeloosheid, er gebeurt niks." (Female victim of burglary and theft (respondent 52), non-participant)

Finally, no significant differences were found between victims' and offenders' answers to the statements on participation and process control.

§1.3.2. Discussion

The category concern for needs is dominated by reflections on the opportunities available to victims and offenders to actively participate in the trial. Active participation refers to the possibility to speak in court and to speaking in private with the judge, though the first element received most attention. Still I start the discussion with a short reflection on passive involvement

The importance of being informed on the criminal proceedings

The findings suggest that providing litigants with more information about the progress of the case may be interesting for the authorities, if for nothing else, at least to do away with the image of passivity and impunity. Van Camp (2011: 133) too from a study among crime victims concluded that "[l]ack of information implies lack of insight, for instance in whether the case is taken seriously", and Malsch (2003) has argued that information provision to citizens (though she writes about the general public, not just those involved in a trial personally) is important with a view to bridging the gap between citizens and the judiciary/the criminal justice system. Combining the findings of the current study with these previous findings again provides for a strong argument for taking more care of informing victims of the progress that is made in their case.

The value-expressive effect of voice

A main issue in the literature on 'voice' is the degree to which litigants value the opportunity to exert voice no matter whether doing so influences the judicial decision. The results of the current study question the so-called independent effect of voice because when talking about having the opportunity to speak in court, most respondents without being asked either added that something should actually be done with the information that litigants convey at that moment, expressed discontentment because what they had said had not been taken into account, or complained that they had the feeling that allowing litigants to speak in court is just a sham. No matter how many

opportunities one has had to speak one's mind, if the information given by the participant is according to this participant not considered by the judge when deciding on the case, the positive effect of having had the chance for participation will in many cases be neutralised. Also, the common feeling among offenders that often it is better not to take the floor in court because doing so might have a negative effect on the outcome points to an instrumental cause for the *non*-use of voice. It is not possible to on the basis of the current study draw firm conclusions about the (non)instrumental effect of voice, but the results are more supportive of instrumental theories of the voice effect.

It is possible that the current study's findings about the value-expressive effect of voice are severely influenced by the study's context: people are studied in a criminal law context, and obviously the outcome of the trial has important consequences on people's lives. Stakes are high, and though other studies have looked into high-stake conflicts and found voice to have an effect independent of the sentence, studies looking into experiences of procedural justice in criminal court settings are few.

The relationship between voice and outcome expectations

Let us next consider the relationship between voice and outcome expectations. Heuer *et al.*'s (2002) reasoning about the fact that the variables of standing, trust and neutrality carry outcome information has been touched upon above. Heuer *et al.*'s models however show that the same may be said about whether one was allowed to express one's view during an encounter: the amount of participation[44] granted too was found to communicate about whether a fair or desired outcome will be obtained. This should mean that those litigants who believe that they received sufficient time to state their opinion in court would be more confident that they will receive a fair or desirable outcome than those who did not have a proper chance for exerting voice, and consequently should be more dissatisfied in case of receiving an unfair or undesirable outcome.

Looking at the three respondents who were manifestly discontent about the outcome, we see that one was dissatisfied about opportunities for voice upon leaving the court because she had not had sufficient time to speak her mind and had the feeling that the judge would not take what she said into account. The other two were satisfied about opportunities for voice upon leaving the courtroom and thought that what they had said would be taken into account but upon learning about the judgement found out that it had not been. One would on the basis of Heuer *et al.*'s paper hypothesise that the people in the second situation, who were satisfied with their role in court but let down once

[44] Process control was measured by Heuer *et al.* using three items: (1) I was allowed to express my views during this encounter; (2) I was prevented from expressing my thoughts and ideas during our conversation; (3) I was able to control what happened during this meeting. These are operationalisations that I believe point not to process control but to participation, hence my line of reasoning.

they were informed of the outcome, would be the most dissatisfied with the outcome because these people's expectations that the sentence would be fair or desirable were higher. Yet I could not say that the two people who found themselves in the second situation were more discontent about the sentence than the person who found herself in the first situation. Obviously it is hard to compare levels of discontentment because no quantitative measurement on this has been done, but I find this a most interesting issue to be fleshed out in future studies.

The relationship between voice and neutrality

The results reported above again suggest that a relationship exists between the procedural justice concepts of voice and neutrality, yet the nature of the relationship is puzzling. Two offenders said that they did not have the feeling that the judge was neutral because they had not been allowed much time to tell their side of the story, but the responses to the survey statement asking respondents whether they would value the opportunity to talk to the judge in person at a given point in the procedure met much resistance on the ground that judges would not be able to judge a case neutrally after having talked to litigants in private. This last example in the previous chapter led me to conclude that there may be a negative relationship between perceptions of voice/participation on the one hand and perceptions of neutrality on the other hand. Yet the first example indicates that when litigants are not given sufficient time to voice their opinion feelings of neutrality are eroded too, that is, that there is a positive relationship between voice and neutrality. One could argue that it is simply a matter of allowing both parties to a conflict an equal amount of opportunities for voice, but some respondents felt that even if the judge would talk to both parties the principle of neutrality would be impinged on. This provides plenty of food for thought. It could be the case that in reality there is no problem at all, e.g. that the fact that a judge provides one of the parties less time to voice its opinion during the trial than the other party does not imply that (s)he is not neutral. People's perceptions may be misperceptions due to a lack of knowledge about how the criminal justice system works, but in the end exactly these perceptions are at the centre of the theories of justice and of this dissertation.

Procedural justice literature's inattentiveness to factors inhibiting active involvement

The overview of factors that facilitate or inhibit making use of possibilities for voice given above shows that involvement in decision making procedures is more complicated than procedural justice literature tends to suggest. Granted, procedural justice researchers have paid ample attention to individual differences in sensitivity to fairness and to individual differences concerning the factors that are taken into account when judging the fairness of decision making procedures, but the current study to my knowledge is the first in the field of justice research to stress that, at least in a criminal

law context, the fact that one has a high need for participation in decision making procedures does not automatically imply that one will actually go on to participate, as a number of structural factors inherent to the criminal justice system as well as personal characteristics inhibit or facilitate participation. Also, those who do decide that they wish to participate may find other ways for doing so than through participation in the trial – the example that comes to mind immediately is that of participation in mediation as a substitute for participation in the trial.

Reflections on the cushion of support

The concept 'cushion of support' is one of the key notions of procedural justice theory, indicating that a fair procedure may soften the blow of an undesirable outcome. The statement of the respondent that complained that time to speak one's mind in court is limited but added "But, well, the result is good" stimulates further reflection on this 'cushion of support'. His statement suggests that a fair or desirable outcome may neutralise negative feelings resulting from a lack of voice. A favourable outcome may thus mitigate dissatisfaction about a lack of opportunities for participation. The outcome then provides a cushion of support against an unfair procedure.

The motivated reasoning hypothesis

The observation that a number of participants (four) said that after the trial was finished they had been reflecting on whether they had said the right things or should have taken another lawyer rings a bell, in that the value protection model asserts that only in case the outcome of a decision making process does not match their moral mandate, people re-evaluate the procedure to seek for evidence of injustice. Two of the four respondents discussed here were indeed faced with an outcome that they considered unfair. The third one was a victim who had trouble assessing the judgement – she did not understand it well enough for her to be able to judge it. The fourth one had been contemplating what he had said in court immediately after leaving the court, even before having learned the sentence. In other words, among the current sample of victims there were some who contemplated and re-evaluated the process even if not faced with an outcome they considered unfair.

§1.4. Social standing

§1.4.1. Description of results

Again I created a category labelled 'social standing' because a number of respondents gave examples of (1) how they felt that their social standing was compromised because of the court proceedings, and (2) how they felt that their social standing was enhanced by acknowledgement for their position from the judge. Examples of the second mechanism were described above (under 'dignity and

politeness'). I will discuss here the examples relating to the first situation. These are especially examples that concern the presence of an audience in court. Both victims and offenders talked about how the presence in court of other citizens infringed upon their privacy and social standing. Above, when discussing the need for participation, I described how the presence of an audience in court makes some people hesitant to speak in court. The presence of an audience is disturbing to litigants for other reasons too, among which the fact that complete strangers hear details about one's life. Three victims and six offenders said that strangers have no business with their lives or that of the offender. It is painful when details about one's life are brought into the open in a court for strangers to hear, and there is a risk that someone one is acquainted with (e.g. a colleague) accidentally is present in court. Especially members of the public who are not awaiting their own case but just come to watch a trial are resented. Two victims said that the fact that the public is constantly talking and sometimes even laughing gives the impression that the case is not taken seriously. There were also three people, of whom two offenders, who felt distressed by the condemning looks of the spectators.

Finally, one could hypothesise that litigants who find the public supportive experience acknowledgement, which would enhance feelings of social standing, but such examples were not found in the sample.

"Het is wel een benauwelijk gevoel, al die mensen. Ik had liever dat het gesloten was, alleen de rechter en de advocaten en zo. En je weet nooit, als je mensen kent, die kennen uw rechtszaak niet, en dan 'ah kijk die heeft een rechtszaak'. Eigenlijk is het privé he." (Male offender, fraud (respondent 33), participant)

"Iedereen zit daar naar u te zien van allez wat zit daar nu." (Female offender, intentional and unintentional assault and battery (respondent 46), participant)

Feelings that social standing is being intruded upon do not only result from the trial itself. One respondent referred to the fact that the letters she had received from official bodies had been closed with tape instead of glue, which gave her the uncomfortable feeling that anyone who got the letters into their hands would be able to read them if they would want to.

"En wat ik daar bijvoorbeeld ook erg aan vind (…) dat is dat die hun brieven (…) die maken die niet toe, die zijn open en daar zit dan zo'n stukske plaktape over. Iedereen kan dat opendoen en terug dichtdoen bij wijze van spreken he. (…) Dat is gewoon met een plakkertje toegeplakt. Precies als het eerste het beste reclameblaadje. Da's een onnozel detail he, maar, ja. Voor hetzelfde geld denkt onze postbode 'wat heeft ze hier mispeuterd, ik ga eens kijken'." (Mother of female victim of sexual abuse (respondent 50), participant)

§1.4.2. Discussion

The findings reported here again suggest that social standing plays a role when victims and offenders evaluate their encounter with criminal authorities. Models on litigants' satisfaction with and assessment of the criminal justice system and models on how litigants experience their encounter with the criminal justice system probably should include this element.

§2. Neutrality

Based on Tyler and Lind (1992), I discerned between three categories relating to neutrality when coding the interviews; these were (1) absence of bias or prejudice, (2) fact-based decision making and (3) honesty. Yet the third category turned out to be unnecessary.

§2.1. Absence of bias or prejudice

As explained above, absence of bias was understood to relate to impartiality between victim and offender or between accomplices. Absence of prejudice was understood as absence of premature judgement about the alleged offender's guilt or about the victim's role in the offence.

§2.1.1. Description of results

Three victims and one offender throughout the trial perceived criminal justice officials to be ***biased*** **in favour of the other party**. One victim complained that she did not receive the judgement whereas the offender did, another had the impression that the offender received more psychological support and information than herself, and yet another victim thought that too much attention is paid to offenders' objections and that criminal authorities are too benevolent towards offenders. The single offender who had the impression that the criminal justice officials were in favour of the victim got this feeling as she was waiting in the waiting room for the trial to start and she observed the clerk informing the victim about how much longer she would have to wait for the trial to start, whereas he did not inform her. Note that none of the respondents charged the judge with being biased.

"Maar dan van dat vonnis te gaan ophalen (…) dat was zo echt wel een teleurstelling. Zo van, allez, ik ben inderdaad wel het slachtoffer en dan mag die dader dat wel komen halen en ik mag niet weten wat hij eigenlijk gekregen heeft." (Female victim of intentional assault and battery (respondent 32), participant)

"En ik vind ook dat de daders teveel worden gevolgd. Bijvoorbeeld met uitstellen enzovoort, dat soort zaken, dat er heel veel aandacht wordt gegeven aan hun bezwaren enzovoort. Dus uiteindelijk in verhouding er relatief te veel welwillendheid is voor de daders." (Male victim of burglary and theft (respondent 51), non-participant)

As for *prejudice*, two offenders had had the feeling that their **judges had been convinced of their guilt in advance** and had not been receptive to new information. One of these two had put a lot of effort in providing evidence about the case himself, but in the end had the feeling that the judge had not taken this evidence into account. He was very frustrated that all his efforts had been in vain.

"De rechter was zo op een gegeven moment aan het zeggen van dat dat niet, dat dat niet waar was wat ik zei, of dat dat op niks sloeg. (…) En toen begon die rechter zo haar eigen verhaal daarvan te maken, dat ik dat en dat zou gedaan hebben en zoals zij dacht, dat dat dan voor haar het vanzelfsprekende was." (Female offender, intentional and unintentional assault and battery (respondent 46), participant)

One additional aspect that fits the prejudice category is a **gender issue**. Six respondents (three victims and three offenders) mentioned the sex of the judge that had judged their case, four of whom added that the judge's sex may have an influence on case outcomes. Female judges are perceived as more severe than male judges, especially when children are involved.

"En ik denk ook wel, euhm, de rechter en ook die mensen die voorzitters en zo die daarnaast zaten, het waren allemaal vrouwen, en dat heb ik, da's bijvoorbeeld een opmerking die ik thuis gemaakt heb tegen mijn man, het waren allemaal vrouwen he. Er zat geen enkele man bij. (…) Ik denk dat dat in dergelijke zaak verschil maakt." (Mother of female victim of sexual abuse (respondent 50), participant)

The **survey statements** about bias and prejudice were: (1) "[it is important that] the judge will be impartial and will favour neither party", (2) "[it is important that] the judge will treat all parties alike, that he will not discriminate", and (3) "[it is important that] the judge will apply methods that treat all parties equally". Again a number of remarks concerned the difference between victims and offenders, *i.e.* that offenders should be approached in a more severe manner than victims. Then there were two respondents who mentioned that neutrality has to do with respect, and one linked it to voice. The first two implied that being treated with respect is a precondition for perceptions of neutrality to arise. The second said that judges who do not allow offenders opportunities for voicing their opinion are perceived as biased. The analysis showed no significant differences between victims' and offenders' opinions as to these three statements.

"De rechter is neutraal want die gaat u niet de mantel uitvegen à la jij bent het grootste krapuul dat hier rondloopt." (Male offender, intentional assault and battery (respondent 31), participant)

"Absolument, il doit être le plus neutre possible. Il doit me respecter." (Male victim of intentional assault and battery (respondent 3), participant)

"(…) als die niet onpartijdig is dan krijg je dus wat ik heb voorgehad he, dat je soms het gevoel hebt dat je niets te zeggen hebt." (Female offender, intentional and unintentional assault and battery (respondent 46), participant)

§2.1.2. Discussion

The relationship between receiving opportunities for voice and perceptions of neutrality

One offender said that judges who do not allow an offender time to voice his/her opinion and story give the impression that they are partial. Remark that the respondent did not compare the amount of time she had received to voice her opinion with the amount of time the victim had received. She did not make this comparison. The fact in itself that she was hardly allowed the opportunity to speak her mind was sufficient for her to feel that the judge was not neutral. This relationship between perceptions of having received sufficient opportunities for voice and perceptions of neutrality was fleshed out above (see paragraph §1.3.2 on page 262).

The relationship between receiving respect and perceptions of neutrality

Two respondents made a link between respectful treatment and the degree to which the judge will treat one's case neutrally, stating that judges behaving disrespectfully do not give the perception that they will treat the case in a neutral manner. What these persons say is that respectful treatment communicates about the degree to which the judge will treat one's case neutrally. It is amenable that if a judge calls someone a crook, it is hard for this person to keep believing that when deciding on the case the judge will be neutral. There may thus be a relationship between perceptions of 'dignity, respect' and perceptions of neutrality: perceptions of neutrality may depend on perceptions of respect for dignity. The relationship between 'dignity, respect' and neutrality was touched upon earlier in this dissertation (see paragraph §1.1.2 on page 170), when a victim was described who said that she had been treated impolitely and therefore felt as if she was the offender. When discussing that finding I referred to findings from Tyler (1990) and Wemmers (1996), who found that standing and neutrality are positively related. The specific finding reported here corroborates this relationship.

The influence of the judge's sex

Quite some litigants expect defendants to be sentenced more severely in case they are tried by a female judge rather than a male judge, especially in cases of sexual offences. I consulted literature on gender effects on judicial decision making to find that evidence is mixed (compare e.g. Peresie, 2005 and Songer *et al.*, 1994), yet the fact that no less than six participants mentioned the issue points out that among litigants it is something that may intrude upon perceptions of neutrality of judges. This is an unexpected finding because the sex of decision makers has not figured in fairness literature.

§2.2. Fact-based decision making

§2.2.1. Description of results

Several issues relating to whether all information necessary to make an informed decision had been gathered by the criminal authorities were discussed during the second wave interviews. Respondents talked about such issues as whether the judge was well-prepared, whether files included all relevant information and whether the case had been investigated sufficiently well.

Spontaneous references to whether or not the authorities had done everything in their power **to investigate the case to the bottom** were found in five victim interviews and three offender interviews. Three victims and one offender had gotten the impression that the criminal justice system operates like an assembly line. They argued for example that the judge had done no effort to check their financial claims – he had simply accorded the amount that they had asked for. The offender said that he had provided plenty of evidence to the judge invalidating the victims' financial claims, but that nothing had been done with this evidence. These people said that their judges simply had opted for a solution of convenience, unwilling to spend time on investigating the truth value of the claims.

"Correctioneel voor mij is precies een systeem aan de lopende band. En euh, die nemen precies niet veel tijd (…) die krijgt zoveel zaken op één dag en dat is zo 'ah wat zouden we deze geven?'. Ik heb echt het gevoel dat dat echt dinges precies achter de rug, tussen pot en pint met mekander dingen zo worden afgesproken of van 'ah ja diene zullen we dat doen'." (Male offender, intentional assault and battery (respondent 8), non-participant)

One victim suggested that judges should spend more time on investigating the case themselves instead of relying on police records. The specific respondent referred to a Dutch reality show called 'De Rijdende Rechter' (free translation: 'The Travelling Judge') in which judges figure that perform visits to crime scenes even for cases as small as neighbour disputes and talk to all parties involved in person. The overall conclusion is that litigants attach great importance to the criminal authorities meticulously investigating the case; two victims explained that the case being investigated well conveyed upon them a feeling of acknowledgement and facilitated their recovery.

"R1: Dat geeft ook euh (…) dat maakt het gemakkelijker om te verwerken, dat die mensen het au serieux nemen. Moesten ze er zo een loopje mee nemen, je hoort dat soms van zo van die rechtszittingen waar ze, allez, de zaken niet, het moet vooruitgaan. (…)
R2: Dat is een stuk erkenning." (Male and female victims of burglary and theft (respondents 51 and 52), non-participants)

Four victims indicated that they believe that judges do look at the specifics of each case and each offender in order to pronounce a sentence tailored to the specific offender. Different offenders are not, so they said, tarred with the same brush. This individualised approach is highly valued.

"Je hebt die bemiddelingsinstantie, en dan voor verdachten ook die mogelijkheden voor een maatschappelijke enquête en zo, dat er toch wat moeite wordt gedaan om tot een eerlijke strafbepaling en strafmaat te komen. Het is niet zo van ja kom nummer 5, kom maar verder, neen." (Male victim of theft (respondent 37), non-participant)

Two victims and two offenders throughout the interview of their own accord talked about whether the judge and prosecutor had in their opinion sufficiently studied the file and were **well-prepared** for the trial. Two others commented on this subject as they came across the survey statement on this issue. Except for one, all were satisfied about the judge's and prosecutor's efforts to prepare the file. People find signs of thorough preparation of files in the specificity of judge's questions or remarks (e.g. the prosecutor remarking that the victim has no financial claims, thus showing that he has read the mediation agreement). Interestingly, one victim from the fact that the prosecutor started the trial by giving an overview of the accusations and the facts – which is normal practice – concluded that the judge had not prepared the case well. Also, there was a respondent who thought that it would have been better in her case had the judge not prepared the case so well, because she felt that the judge had not been open to any new information that was not included in the file.

"*(vrouw van respondent)* Je hebt gezegd dat de eerste ook veel gerichter vragen stelde, waaruit je effectief kon afleiden dat ze het dossier gelezen had. Dat heb je toen wel gezegd, dat je verschoot van bepaalde vragen die ze stelde, dat die niet uit de lucht gegrepen waren." (Stepmother of male victims of intentional assault and battery (wife of respondent 6), non-participant)

In two victim interviews and one offender interview references were found to the judicial **file not including all relevant information**, e.g. the results of the psychological tests that the offender did in prison and letters written by child victims. One person, a victim, was upset by the fact that the judge had acquitted the offender**, disregarding the evidence** that in his opinion was clearly present. The parents of an offender who had an underage accomplice thought it was incorrect for their son's **case to be dealt with in the absence of the accomplice** (as different tribunals are competent for minors and for adults, they would not appear in the same court together). The fact that the youngster would not be there at the time their son would be tried to them was not right as that would prevent the judge from creating a good understanding of the facts.

One final aspect of fact-based decision making is whether judges allocated **sufficient time to try the cases**. Respondents were asked explicitly whether they thought the judge had done so. The majority were satisfied about the time allocated to try their case, most saying that there was not much to be said because the case was clear, the judge was well-prepared, and there was simply nothing more to say than what had been said. One exception was the following:

"Die zat daar vanvoor en die had zo haar eigen mening een beetje en die wou daar ook een beetje haar eigen verhaal van maken, om het precies zo rap mogelijk onder de voeten te hebben." (Female offender, intentional and unintentional assault and battery (respondent 46), participant)

The **survey statements** on fact-based decision making were: (1) "[it is important that] the judge will carefully examine the evidence", (2) "[it is important that] the judge will carefully explain the reasons for his decision", (3) "[it is important that] the judge is very well acquainted with the dossier and is thoroughly prepared", and (4) "[it is important that] the judge will examine the case carefully and will take the time to do so". Support for the statements was high; there were no significant differences between victims and offenders. As for the comments, one person said that judges should not be acquainted with the file to the degree that they are not open anymore to new elements that are raised during the trial, and one said that currently too much time is devoted to try cases – as there is a written file, he reasoned, there is no need to spend much time on cases in court.

"Ik vind dat ze tevéél tijd nemen. (…) Er is al zo'n onderzoek gebeurd, er zijn al zo'n onderhoren geweest en al zoveel verslagen op papier gezet, deskundigenverslagen, euh, labo's en wat weet ik allemaal. Waarom moet dat nog eens zo'n pak geld kosten aan tijd en al die mensen die daar zitten te wachten, te luisteren, te babbelen, te tetteren, te doen, … allez, het stopt niet he." (Male offender, sexual abuse (respondent 53), participant)

§2.2.2. Discussion

The relationship between fact-based decision making (information-gathering) and victim acknowledgement

Elements of fact-based decision making – did the authorities gather all necessary information and did they study this information well? – made up the bulk of comments that were included under the heading 'neutrality'. Victims talked more about this issue when discussing the criminal justice system than when discussing the police; offenders' attention to this issue was not that different. As for the topics, there was no remarkable difference between those mentioned by victims and those mentioned by offenders. Litigants basically wish for judges to be able to make an informed decision, which presupposes that the file is complete, and to take time to carefully consider the evidence. These results do not give rise to additional considerations on the existing theories of justice, apart from the

fact that there may be a relationship between fact-based decision making (interpreted as thorough information-gathering) and victim acknowledgement, which is a matter of standing. The fact that the criminal authorities conduct a good investigation gave two victims the feeling that the matter was taken seriously and thus of victim recognition, which in turn helped them to put things behind them.

§3. Performance

§3.1. Description of results

Eleven respondents (eight victims, three offenders) mentioned that the **criminal procedures are slow**. Most people talked about the time that passes between the crime and the trial, a number mentioned the fact that trials are often postponed to a later date for all kinds of reasons, and a few brought up the time that passes between the trial and the proclamation of the judgement.

The reasons why people are irritated by the perceived slowness with which cases are processed are several. Most often mentioned was a psychological reason, *i.e.* the human need to know what to expect. The uncertainty with which one lives while awaiting the trial was mentioned by both victims and offenders. Also, one tries to come to terms with what has happened but is regularly forced to relive the experience. One victim said that it might be a good thing that offenders have to wait for a long while before knowing what will happen to them, because the uncertainty that comes with it is a kind of punishment in itself. Three offenders confirmed that it feels like a punishment indeed.

"Elke dag daar zo aan denken is eigenlijk het negatiefste wat ik eraan vind zo. (…) Het is eigenlijk nooit echt gedaan, het stopt precies nooit, het is altijd maar een volgende stap en dan is dat afgehandeld en dan is het weer wachten op een volgende afspraak, zo, allez, je weet nooit echt, je weet nooit definitief wat er je eigenlijk nog te wachten staat." (Male offender, violent robbery (respondent 48), participant)

"Want die drie jaar daarvoor is eigenlijk ook al een beetje een straf op zijn eigen. Want je zit drie jaar in die onzekerheid te leven, dat je eigenlijk niet goed weet wat er gaat gebeuren." (Male offender, intentional assault and battery (respondent 8), non-participant)

Other than psychological/emotional reasons were the fact that the costs of compensation rise as interests are added (one offender's trial took place more than four years after the offence; she had to pay more than four years of interests on top of the compensation), the fact that the other party's lawyer has ample time to build a defence based on lies, to create stories and make things appear worse than they are, and the fact that one needs to spend the time awaiting the trial in preliminary custody. The degree to which the crime had financial consequences for their business was an important topic to employers who had become the victim of stealing employees: the greater the risk

of bankruptcy, the more frustrating the slowness of criminal justice. From what one victim said I deducted that one main cause of frustration about the slowness of the criminal justice system may be that people do not know what happens in the meantime. Possibly, if people were explained exactly what happens in the time in between the offence and the trial, much frustration could be prevented.

Another important remark is that the time that passes before an offence is brought to court may be perceived to be longer than it actually is; the subjective experience of time may therefore be more important than the actual pass of time. One participant overestimated the duration of the criminal proceedings and was surprised to find out during the interview that actually 'only' one year and a half had passed ("Dan valt het toch nog mee. Dat voelde lang aan"), another said that the one year that had passed since the offence to him had felt like two or three years.

The fact that trials are often postponed to later dates is much disapproved of. Also, the time in between two court sessions is perceived as too long. One respondent indicated that the problem is not only that one has to wait oneself, but also that the judge must each time start from scratch again. Then there was a respondent who said that too much time passes between the trial and the pronouncement of the judgement. In Belgium, the judgement is usually pronounced between two to four weeks after the trial. The particular respondent was especially upset with this because the judgement in the end contained no specifics about the case, it did not state any reasons for the judgement. Why, then, did they need so much time, the man asked himself.

"En dan ook bijvoorbeeld tussen de laatste zitting en de uitspraak, daar was bijna vier weken tussen. Dan vraag ik mij af wat ze in die maand nog doen? (…) En uiteindelijk krijg je het vonnis en is het het meest standaard vonnis waar je een copy paste kunt van maken, en de afspraak die onderling gemaakt is staat er niet in. Dan heb ik zoiets van, sorry, dan moet je ook niet zeggen dat je je tijd ervoor gaat nemen om iets uit te werken." (Father of male victims of intentional assault and battery (respondent 6), non-participant)

The fact that it takes much time for the criminal justice system to process cases led some respondents (especially but not exclusively offenders) to remark that the criminal justice system's main goal is not to fight crime but to maintain itself. The complexity of the procedures, the perception that people who take a lawyer receive milder punishments than others and the habitual postponement of trials all contribute to the perception that the criminal justice system aims in particular at preventing that it would fall out of work.

"Ik heb het gevoel dat correctioneel echt zoiets is van kijk we geven u iets, ben je daar niet mee tevreden dan moet je maar in beroep gaan." (Male offender, intentional assault and battery (respondent 8), non-participant)

"Maar het is zo het idee, de irritatie is dat justitie draait om zichzelf in stand te houden, meer dan om eigenlijk euh… hoe zou ik zeggen, euhm, de misdaad te bestrijden. (…) Ik bedoel vooral, het uitstellen tot een nieuwe zitting, en nog eens een zitting, de omslachtige procedures, en de advocaat kan in beroep gaan om procedurefouten enzovoort. Dus de zaken moeten kunnen, ze moeten bezig blijven enzovoort, hun eigen systeem kunnen toepassen." (Male victim of burglary and theft (respondent 51), non-participant)

"Dat kwam dan ook weer zo'n beetje over, 'als jij zo gaat reageren tegen uw kinderen dat ze niks uitsteken hebben wij binnenkort geen werk meer'. Dat kan banaal klinken maar zo kwam het dan eigenlijk over." (Male offender, intentional assault and battery (respondent 31), participant)

By way of a first exception to the rule, one respondent explained that the trial was planned too soon after she reported the offence, which had given her the impression that they wanted to quickly try the case without properly informing or involving the victims. By way of second exception to the rule, there was one respondent, an offender, who said that it is good that much time passes between the offence and the trial, because it allows one to prepare for the trial and to participate in mediation. Also, he added, it allows the victims to calm down and therefore there is less chance of physical aggression by the victims in court (he was very concerned that this would happen). Moreover, he said that the choice between waiting for the trial a bit longer to allow the authorities to investigate the case well or between being punished with a sentence that does not at all fit the offence is easily made ("het is beter dat dan verkeerd gestraft natuurlijk he").

A number of respondents advanced alternatives that should allow speeding up the criminal procedures and making them less costly – the cost to society of the administration of justice was addressed by many respondents. One suggestion was to shorten the procedures when the facts are proven on the basis of DNA material or when people were caught in the act. Another suggestion was to make an arrangement with offenders at the very start of the procedure – which resembles the Belgian practice of penal mediation – or to drop the charges when people make an arrangement among themselves through mediation. Someone proposed that trials could take place in an office, with just the conflict parties, their lawyers and the judge present, which would save staff and time.

"Ik heb die advocaten, ik had er twee, ik-weet-niet-hoeveel-geld gemoeten. (…) Maar als ze in het begin gewoon met mij iets hadden willen overeenkomen, dan had dat zo'n zaak niet geworden. Dan had justitie daar geen tijd moeten insteken." (Male offender, theft (respondent 14), participant)

Four more codes were created under the heading 'performance', the first three of which come from victim interviews and the fourth of which comes from an offender interview. Two victims indicated that the fact that the offenders had been apprehended, put in preliminary custody and brought

before a judge, that is, that the criminal authorities had performed their duties well, conveyed upon them a feeling **that the matter was taken seriously**. As said before, it seems that a sense of acknowledgement followed from the authorities working to bring the offenders before court. Much the same way, one victim expressed disappointment about judges who in his view fail to **take responsibility**, e.g. by shifting responsibility to experts or by not taking any measures to take abused children away from the abusing parent. Two victims remarked that the criminal justice system is very **bureaucratic**, involving a lot of paperwork. Finally, an offender said that judges are **not professional**, that is, that they do not truly take the effort to really try to judge cases well.

"Ik vind het goed dat ze gestrikt zijn, dat het au sérieux genomen is, dat daar acties ondernomen zijn, dat ze vastgezeten hebben. (…) ik vind die procedure, het helpt wel dat er een procedure is. Ten eerste dat ze aangehouden worden, als ze in voorlopige hechtenis hebben gezeten, en dat er een rechtszitting is." (Male victim of burglary and theft (respondent 51), non-participant)

"(…) die mensen zijn uit het zicht verloren dat die wel met mensen bezig zijn he. Met mensenlévens ook soms een beetje he. (…) Ik heb zoiets van, dat is een persoon die een heel hoge functie in zijn leven gekregen heeft, maar die moet dat ook effectief tegoei uitvoeren. En ik heb dat gevoel niet bij die mensen." (Male offender, intentional assault and battery (respondent 8), non-participant)

§3.2. Discussion

The slowness of the criminal justice system was much discussed during the interviews. It is an often mentioned critique on the criminal justice system in the media; the current study confirms that it indeed is an important issue to those encountering it. Several reasons were mentioned, but most mentioned was how difficult it is to cope with the uncertainty. Remember that signs of fairness are especially important to people in uncertain situations (e.g. van den Bos and Miedema, 2000; van den Bos, 2001b; van den Bos and Lind, 2002). The van den Bos *et al.* studies have focused specifically on how introducing a procedural manipulation allowing or not allowing participants voice influences fairness judgements in situations of uncertainty as opposed to other situations; the results of the current study propose that litigants awaiting a trial are in need especially of *information*. In fact, concern for informational needs may prevent criticism on the slowness of the criminal proceedings.

§4. Court setting and organisation

§4.1. Description of results

Many of participants' remarks about the criminal justice system related to the organisation of trials and the way time is used in court. I decided therefore to create this fourth category.

One of the aspects of the organisation of courts causing litigants inconvenience as said is **that trials are public**. The presence of other citizens causes nuisance for a number of reasons, which were touched upon above, such as the intrusion of privacy or the fact that the prying eyes of the public may keep people from speaking up in court. A reason that was not yet mentioned is that the public present in court causes a lot of noise, which causes distraction and makes it hard to understand what is said. The same complaint is applicable to lawyers: they too cause a lot of noise by constantly talking to each other and walking in and out of the courtroom. Many find this disturbing.

Four victims and two offenders made observations about **the inefficient way in which time is used in court**. Letters inviting victims and offenders to attend the trial in general state that the trial starts at nine o'clock in the morning. In reality, litigants often need to wait for some time, sometimes more than one or two hours, for their case to actually start. This custom does not meet approval, to the contrary. Not only does waiting in court for one's case to start cause stress, people without any experience with the criminal justice system sincerely expect their case to start at nine and feel troubled when this expectation is not met. It was suggested several times that time management in court should be improved. One proposal was to set a specific time for every case and to mention this exact time in the letter inviting people to the trial.

"Je krijgt uw dagvaarding dan, maar bij iedereen staat daarop 'om negen uur 's morgens'. Dus sommige mensen zitten daar te wachten tot twaalf uur en dan zijn die pas aan de beurt. Ok, trek dan voor elke zaak bijvoorbeeld dertig minuten uit, en laat de volgende dan dertig minuten na mij komen. In plaats van daar drie uur zitten te wachten, dat is ook nutteloos." (Male offender, intentional assault and battery (respondent 31), participant)

"En dat wachten dat was oneindig lang he. Ik moest om negen uur aanwezig zijn en ik ben om twaalf uur buitengekomen. En ja. (…) Dat was maar twee uur maar dat was precies alsof dat drie maand was. Ja dat was niet plezant." (Male offender, theft (respondent 14), participant)

Notwithstanding these complaints about the way time is organised before the trial actually starts, interviewees were satisfied about the organisation of the trial itself, that is, about the fact that there is a procedure that prescribes when each participant is allowed to speak. Respondents said that this procedure is good because it allows each of those present some time to speak (albeit that there is a feeling that more time should be available to do so), and because it gives structure and certainty.

"Ik vond dat, dat geeft zo wat zekerheid en structuur, ik vond dat dat goed verliep. Ik heb geen problemen daarmee. En ik vind wel dat de dader heel wat ruimte krijgt ook om zijn of haar bedenkingen te maken. Dat loopt wel goed ja." (Male victim of burglary and theft (respondent 51), non-participant)

Three victims commented on their **position vis-à-vis the offender** in court: one thought it is difficult to feel at ease in court because victim and offender sit on the same benches while awaiting their trial, and two others mentioned that it is desirable that victim and offender are seated in a position that allows avoiding eye contact. One offender had felt uncomfortable because she and the victim had to await the start of the trial in the same waiting room. Other things mentioned that relate to court organisation were the fact that **judgements are not pronounced immediately** after the presentation of the case (N = 1) and the fact that **waiting rooms for detained offenders** are "19th century, freezing cold and utterly small" (N = 1).

People were asked during the interview to describe the courtroom, in order to find out how they feel about the courtroom in itself and about the **customs and habits** governing courtroom procedures. Elements included in the answers were that courthouses are much like labyrinths, that the judge is seated on a raised bench, that everyone is required to rise when the judge enters or leaves the room, that not just one single magistrate but five magistrates are present (a three-judge panel, a clerk and the public prosecutor), that there is a lack of security (*i.e.* that anyone can enter a courtroom without being checked), that acoustics are bad and it is therefore difficult to understand what is said, that magistrates wear gowns and that the interior of courtrooms is quite special.

As for the bad acoustics, victims sitting on the audience benches do not easily hear what is said by the judges and the offender. A reflection made was that victims do not leave the courtroom any wiser than they entered it, which provides food for thought with a view to full participation.

"Wat mij vooral daar irriteerde was het feit dat ik bijna niets kon verstaan. (…) Dat wordt dan een ritueel waar je niet veel wijzer van wordt. (…) Ik heb daar niks van verstaan. En dan zit je daar eigenlijk voor spek en bonen he." (Male victim of burglary and theft (respondent 51), non-participant)

The customs that judges are seated on raised benches and that it is obligatory to stand up when the judge enters or leaves the courtroom are commonly regarded as outdated and somewhat ridiculous, but only one person expressed having problems with these habits. Courtroom interiors similarly were regarded as old-fashioned[45], but those discussing it in general said that the rooms are nice. On the other hand, these customs, habits and interiors contribute to the atmosphere being perceived as

[45] It must be said that the courthouses that the respondents were confronted with are all old buildings. The building in which the courthouse of Mechelen is located was built in the first half of the 16th century; the courthouse of Turnhout is located in a castle that was built in the first half of the 12th century. The courthouses of Brussels and Leuven were built respectively in the second half of the 19th century and in the first half of the 20th century. Obviously, the fact that these are all old buildings has influenced the findings; one might expect for example that acoustics are better in modern courtrooms.

intimidating. The impression that is conveyed is that what happens in the room is serious. Still the people discussing this aspect were generally of the opinion that it is good that courtrooms make that impression, because that commands respect from offenders. One respondent said that one should see through this display of power: the criminal justice system may display its power with all the customs and habits mentioned, but in the end, he said, many of those sentenced to a prison sentence are quickly released from prison or not even put in prison because of prison overcrowding, which then undoes the intimidating effect of courtrooms.

"Dat zijn zo die, het gebouw zelf dat trekt op niks, als ze de micro's niet gebruiken hoor je zeker niks, het feit dat die mensen een halve meter hoger moeten zitten en zo… Dat is aan mij niet besteed, en ook niet de kostuumpjes van de advocaten en zo… maar is dat belangrijk, is dat nu zo… alhoewel ja misschien toch wel." (Male victim of theft (respondent 37), non-participant)

"Misschien machtsvertoon mag wel, maar, ja, (…) daar dat machtsvertoon is leeg eigenlijk, in die zaal zelf, omdat (…) ik weet niet in hoeverre het allemaal waar is maar als je naar het nieuws kijkt en zo, blijkbaar worden ook veel mensen redelijk snel terug vrijgelaten omdat er geen plaats is en van die dingen (…) ja, dan toon je je zo zwak als je maar kunt he." (Male victim of violent robbery (respondent 49), participant)

§4.2. Discussion

The importance of courtroom habits and organisation

In this section I reported on a number of courtroom characteristics and habits which impact on the way people experience the adjudication of criminal cases. How do these elements fit in a theory on the way people experience the criminal justice system? None of the theories described in the second chapter has paid attention to these aspects of an encounter with the courts. Obviously, these theories focus on authorities' behaviour and the symbolic message that this behaviour conveys about the relationship between citizens and authorities, whereas the elements enumerated above do not fit into the category 'authorities' behaviour'.

The results suggest that when reflecting about how litigants experience the criminal justice system, issues pertaining to the organisation of trials, both the physical organisation (e.g. presence of an audience, seating arrangements) and the habits and customs (e.g. clothing, jargon) should be taken into account too. There is a body of literature on how procedural rules and courtroom design are intended to define the roles that each trial participant is allowed to take on (Thibaut and Walker, 1978; Maxwell and Morris, 2002; Peak, 2004) and on how the rules governing trials and the physical organisation limit the space for communication in court (e.g. Arrigo and Williams, 2003; Kool and Moerings, 2004; Aertsen and Beyens, 2005; Mulcahy, 2007). It may be time now for justice research

to include results of such research into architectural design, the contemporary value of the principle of open justice, and the necessity of old-fashioned formal habits, as these factors too influence people's assessments of the quality of their encounter with the criminal justice system. There are indications that they influence perceptions of fairness. For example, the fact that judges are seated on raised benches may lead to perceptions of inferiority. The fact that one does not hear what is said in court is highly problematic with a view to participation or, at least, passive involvement. Victims are allowed to attend trials and therefore could be said to have an opportunity to be involved, but if they do not hear what is said one can hardly speak of true involvement in the criminal proceedings. All this means that courtroom characteristics have an indirect influence on perceptions of standing.

The principle of open justice

Many respondents, both victims and offenders, during the interviews spontaneously came up with the presence in court of members of the general public, both victims and offenders and those accompanying them and citizens who come to watch trials as a form of pastime. Respondents were in large favour of curbing the presence of members of the public in court.

This goes against the age-old principle of open justice, which is laid down in article 148 of the Belgian Constitution and in international law[46] and considered by Malsch (2009: 15) as "obviously one of the most important requirements with which contemporary legal systems should comply". In theory, the principle of open justice allows for democratic control to be exerted on the decisions of judges who have, at least in Belgium and many other inquisitorial systems, not been elected by the public but appointed by government or an independent body[47] (Malsch and Nijboer, 2005). The principle of open justice is also said to have a preventive effect and to be an important tool for conveying messages of public denunciation of crimes (Hoekstra and Malsch, 2003; Malsch and Nijboer, 2005). Moreover, it is argued that by allowing the general public access to courts, public confidence in the courts may increase (Malsch and Nijboer, 2005). The principle of open justice, then, is regarded as the backbone of the administration of justice, but the results of the current study provide for new food for thought for anyone engaging in reflection about the contemporary value of the principle. The results are all the more interesting if one looks at them from a participation point of view: as Malsch (2009) points out, attending trials is actually one way in which lays may participate to the criminal proceedings. It seems, then, that participation by litigants in individual cases may be impeded by participation of the general public to the criminal proceedings.

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[46] Article 6 of the European Convention on the Protection of Human Rights; article 14 of the U.N. Covenant on Civil and Political Rights.

[47] In Belgium, for example, the High Council of Justice plays an important role in the appointment of magistrates.

The intimidating atmosphere of courtrooms

Courtroom interiors were labelled as old-fashioned, but, from an aesthetic point of view, were not judged to be unattractive. Still the courthouse is intimidating and makes people feel uncomfortable. This finding is not surprising; Wright (2002: 663) is not the only one to have written about the "formal, procedurally strict and often intimidating atmosphere of the courtroom". What may be surprising is that litigants regard the room at the same time as nice-looking and as intimidating. Maass *et al.*'s (2000) study on courtroom architecture shows that this apparent inconsistency is not at all strange, and that one should make a distinction between the aesthetic value and the psychological meaning of a building. Participants in the Maass *et al.* study too judged a courthouse as "highly oppressive, threatening and hostile" but "did not generally dislike the building" (p. 681).

Maass *et al.* could not from their study on courthouse architecture deduct exactly which architectural features are responsible for the psychological meaning of the building. The authors asked the question whether it is the size of the building, the materials or colours used, the shape of the building or yet another feature? The results of the current study suggest that not the building materials or colours of those rooms but such things as the judge sitting on a raised bench, the lack of separate waiting rooms for victims and offenders and the position of victim and offender vis-à-vis each other add to the intimidating nature of courtrooms. In other words, not so much the courtroom in itself but the customs and habits are the reason why they are intimidating. This finding can explain how it is possible for people to at the same time say that the rooms are nice and intimidating.

These findings are in line with writings by Rock (1993) and Umbreit (2001). The first author has described courtrooms as "great engine[s] of social control" (p. 261) which have been designed the way they are exactly to "confirm identities, segregate groups, and manage relations" (p. 197). The second author has written about the importance of seating arrangements in victim-offender mediation, arguing that victims should be offered a say on the arrangement of the room and the seating of the parties so as to make them feel as comfortable as possible. I have discussed the organisation of courtrooms extensively in De Mesmaecker (forthcoming); I will for now keep to stressing that discussions about this topic are relevant and pertinent with a view to fairness too.

§5. Behaviour of the opponent party

§5.1. Description of results

A topic that quite some respondents spontaneously came up with when discussing their experience in court was the behaviour of the opponent party; I therefore created this fifth category. Victims especially seem attentive to such issues as whether the **offender expressed remorse** in court or showed some expression of emotion, and to **the behaviour of the offender's lawyer**. Offenders did

not talk about these issues very much, the only thing mentioned relating to the other party, by two offenders, was that the victim had based its defence on lies or was not telling the truth.

"Ik heb heel veel verwijten naar mijn kop gekregen ginder, die heeft daar ook staan liegen tot en met (…). En op zo'n moment ben je gewoon sprakeloos he." (Female offender, intentional and unintentional assault and battery (respondent 46), participant)

Victims talked quite a lot (N = 9) about the offender's behaviour in court or that of his lawyer. Offenders' lawyers' behaviour was discussed by five victims, all of whom were dismayed about it. Reasons were various. Two felt personally attacked by the defence lawyer because he conveyed upon them the feeling that they were in fact the ones guilty of what had happened, one said that the fact that the defence lawyer spoke about her using her family name but never prefacing it with 'Mrs' came across as extremely disrespectful, another one spoke about the defence lawyer as completely incapable, and a last one was appalled by the way in which the defence lawyer had tried to disparage an expert as biased. Lawyers in general had a bad name among the participants, but were nevertheless hired because many participants believed that they would *need* a lawyer to make it through the criminal proceedings.

Two victims were troubled about the offender evincing not a sign of emotion in court; two others expressed satisfaction about the fact that the offender had offered his apologies. To victims, then, whether or not the offender shows remorse is an important issue.

"Ik heb de hele tijd denk ik naar Y. *(de verdachte)* gekeken want ik wou eigenlijk op die moment ook nog van hem een reactie zien. En die is er niet gekomen. Dat was precies een zoutpilaar die daar stond. Terwijl dat ik dacht nu gaat hij ten minste toch eens kijken of hij gaat – en dát is waar ik mij op gefocust heb." (Mother of female victim of sexual abuse (respondent 50), participant)

"Dat is zo iemand die daar schijnbaar onverschillig staat. (…) Dat is zo… allez ja, dat is misschien, dat is gewoon een verwachtingspatroon, je zou toch iets van emotie of iets ergens iets kunnen zien, maar dat was er gewoon niet. Dus zonder uitleg daarbij denk ik van man het interesseert u hier gewoon niet eigenlijk. En dat is zo…" (Male victim of theft (respondent 37), non-participant)

Three victims mentioned that their offender's defence was based on lies, one other victim felt bitter about the fact that the first thing the offender had done in court when he was asked whether he wished to say something was not to apologise but to hand to the judge documents providing proof that he was already taking therapy. The offender was perceived as thinking only about himself and about saving his own skin. This same victim on the other hand spent considerable attention to the

fact that the offender's lawyer was a completely incapable man who had done no effort at all to prepare the case (she knew so because this lawyer had told that to her own lawyer in her presence). She considered it unfair that the **offender had not received an adequate defence**.

"(…) kwam dat voor mij zo over, in plaats van te zeggen sorry voor wat ik – hij heeft dat wel op een bepaald moment misschien gezegd maar dat was zo het eerste van 'hier is mijn blaadje, ik ben er wel mee bezig'." (Mother of female victim of sexual abuse (respondent 50), participant)

"En uiteindelijk zei die *(de advocaat van de tegenpartij)* vlakaf van ja, pff, ik heb dat hier gelezen, ik ga daar niet teveel aan doen. Dus dan dacht ik van ja, is dat nu eerlijk, eigenlijk is dat ook niet eerlijk." (Mother of female victim of sexual abuse (respondent 50), participant)

§5.2. Discussion

The importance of the relationship between group members

The category of elements listed here – concerning the behaviour of the opponent party and this party's lawyer – like the previous category ('court setting and organisation') is one containing elements that clearly influence the way litigants experience the criminal justice system but that have never been included in any study on fairness. The same reason mentioned above most likely explains this. I believe an important contribution of the current study to the literature is that it shows that people involved in decision making are not only concerned about the quality of the interpersonal relationship with those in positions of authorities, but also with the relationship with other litigants. The evidence reported above shows that the behaviour of the other party impacts upon perceptions of self-regard and acknowledgement and as such upon perceptions of standing. No impact upon perceptions of neutrality was observed; it is logical that the degree to which the opponent party behaves badly does not influence one's perceptions of the authorities' neutrality.

Consequence for satisfaction with an experience with the criminal justice system

Most research on procedural justice has been conducted within work settings/organisations and with respect to civil litigation. The current study suggests that when investigating how people assess the criminal justice system the relationship between litigants too needs to be taken into account. In these settings, things such as whether the other party lied, whether the offender showed remorse or whether the other party's lawyer has shown respect matter too with a view to assessing one's experience with the criminal justice system. This category is different from the other categories in the sense that it contains elements over which the authorities have no power. They can adapt their own behaviour to show more respect and organise trials so as to provide more opportunities for litigants

to speak their own mind, but people when assessing their experience with the court also take into account elements over which these authorities cannot exert control. This is an important finding to those studying how the criminal justice system can ameliorate its internal workings in order for litigants to be satisfied about the system. Above I have mentioned that there may only be so much that courts can do to improve levels of trust because trust in the courts is influenced to a certain degree by the way the police treat citizens. The results reported here suggest that a second influence beyond the control of the courts may come from how people perceive their opponent party.

The importance of the offender showing remorse

The description in the next chapter of the dissertation on sentencing preferences will show the important role of offenders showing remorse in determining views on sentencing: people tend to feel that those showing remorse should not be punished as severe as those not showing remorse. The results reported here too evince the importance of remorse: victims confronted in court with an offender who shows no visible signs of remorse or repentance are offended by this indifferent attitude. Apparently, offenders are expected to at the trial show signs of sorrow and regret. Szmania and Mangis (2005) and Weisman (2009) are among the authors who have written about apology and remorse in criminal cases. Both confirm that jurors, the public and victims expect offenders to show remorse. The psychological literature on social roles helps understand the issue at hand. A social role has been defined by Zimbardo *et al.* (2000: 458) as "one of several socially defined patterns of behavior that are expected of persons in a given setting or group". One expects a student for example to take classes, to study and to write papers, and different social roles rest upon women and men. It seems, then, that offenders too have a social role creating expectations. Society has a certain idea about how wrongdoers should feel about their acts (Weisman, 2009): it expects them to show remorse and repentance and to do so particularly in court (Szmania and Mangis, 2005). From the Szmania and Mangis paper however one learns that the legalistic setting of a courtroom, in particular "the way that the courtroom communication environment is set up" may impede expressions of remorse, because it "does not lend itself to direct expression from any one party" (p. 341). Still observers expect signs of remorse. Weisman (2009) advances three signs of remorse: (1) the full admission of responsibility, (2) gestural expressions (e.g. crying, visible distress) and (3) the personal transformation of the offender (e.g. taking therapy). It is the second category that figured most prominently in the minds of the victims criticising the lack of signs of emotion on behalf of their offender in court.

SECTION II. A MODEL OF EVALUATIONS OF ENCOUNTERS WITH THE CRIMINAL JUSTICE SYSTEM POST-TRIAL

The information gathered throughout the interviews allows to build a model on which elements are taken into account by those who encounter the criminal justice system as a victim or offender. The model presented below (see Figure VI-I on this page) summarises which factors were found to be of importance to the participants when they considered how their experience had been. Again the elements of standing, neutrality and performance were found to be important, yet as for neutrality, the model does not include 'honesty' as this factor was not found to be an element mentioned by the respondents. I would not claim that honesty should be rejected as a determinant of neutrality; it just was not found to be an issue among the participants to the current study.

The results suggest that apart from standing, neutrality and performance, there are two extra determinants of procedural justice and as such of evaluations of encounters with the criminal justice system post-trial, namely court organisation and procedures and the behaviour of the opponent party. These two extra elements should be included in any model on how people experience involvement in a criminal trial.

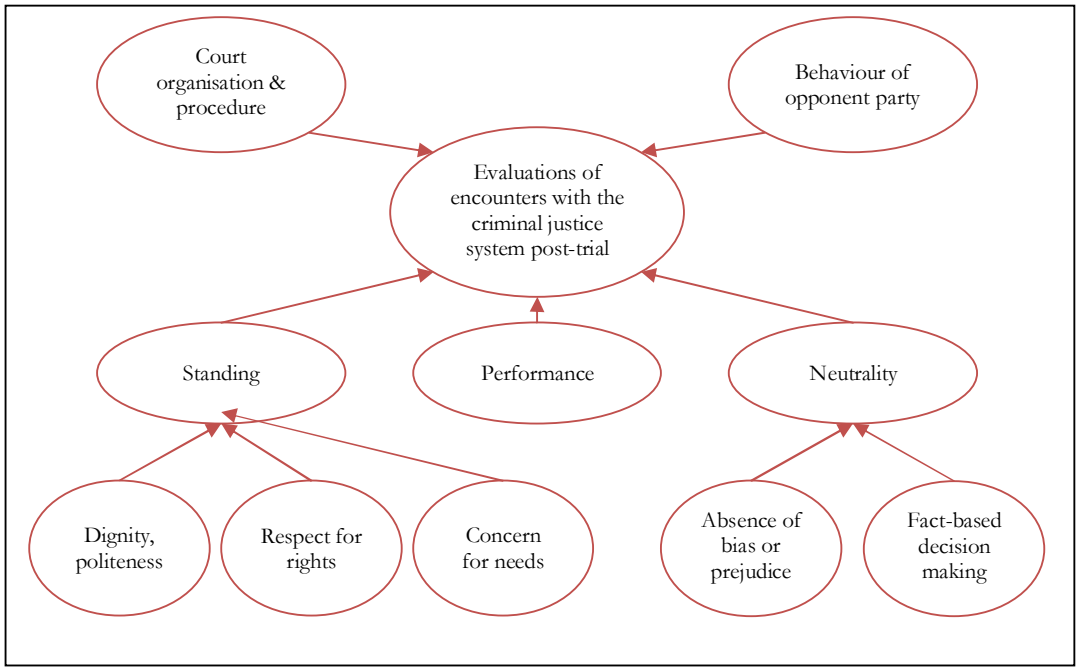

Figure VI-I: A model of evaluations of encounters with the criminal justice system post-trial

Chapter VII. IN SEARCH FOR MORAL MANDATES: VICTIMS' AND OFFENDERS' VIEWS ON PUNISHMENT

In this chapter, the results on participants' sentencing preferences and their assessment of the outcome of the trial are presented and discussed. These should allow providing an answer to the third research question. Throughout the first wave interviews, all victims were asked whether in their opinion the offender should be punished and, if so, what they considered to be the most appropriate punishment. Offenders were similarly asked whether they would accept being punished for their act, and if they had a concrete idea on which punishment would be the most appropriate. During the second wave interviews, all respondents were asked to comment on the judicial decision in their case. In the first section of this chapter, the results with respect to this issue will be presented; in the second section, they will be discussed.

The theoretical background for the current chapter lies in the value protection model. Skitka and Mullen (2002a, 2002b) among others have argued that people involved in a dispute involving moral issues develop moral mandates, which are described as "attitudes or stands that people develop out of a moral conviction that something is right or wrong, moral or immoral" (2002a: 36, 2002b: 1420). The founders of the value protection model claim that in case people have a moral mandate about an issue, the perception of fairness of the outcome of a decision making process concerning that issue depends on the consistency of the decision with this moral mandate. As crime is a prime moral issue, opinions on which are heavily influenced by people's sense of right and wrong, it was considered essential to the current dissertation to ask the question whether those victims and offenders involved in a criminal trial have a strong conviction on what the outcome of the trial should be. By asking respondents during the interviews before trial about their opinions about punishment in the concrete case I aimed to find out whether they held a strong belief about what the correct outcome of the case would be. Throughout the interviews after trial I could detect whether, as the value protection model states, only those outcomes that matched respondents' sentencing preferences were perceived as fair.

Remember that moral mandate literature so far has only focused on people's attitude on whether a person should be punished. Research so far indicates that people hold a strong conviction that the guilty should be punished and the innocent set free, as set out in the third chapter. The current study aims not only to find out whether victims believe offenders should be punished and whether offenders accept to be punished, but adds an extra level: it also aims to investigate whether these people have a strong conviction about *which* punishment would be the most appropriate. Moreover, the current study to my knowledge is the first one to investigate the existence of moral mandates among those personally involved in a criminal trial as a victim or offender of crime.

In order to do so, correct usage of the term punishment and the term moral mandates is key. Therefore two notes on terminology are in order before starting the description and the analysis of the results. First, I will not use the word moral mandate in this chapter except when drawing conclusions. I will use the word sentencing preferences to designate people's views on punishment, because at this point it is not yet clear whether these views can be labelled moral mandates. The word sentencing preferences is more neutral.

Second, as for punishment, Lucia Zedner's (2004) writings on punishment and criminal justice provide a valuable starting point. Zedner argues that there are two component parts to punishment, namely censure and sanction. *Censure* refers to the public disapproval of acts, and serves different purposes. To offenders, it conveys societal condemnation of their acts. To victims, it acknowledges their hurt and suffering. To society, it reaffirms the limits of acceptable behaviour. *Sanction* refers to the infliction of pain, broadly conceived of as unpleasant consequences, which Zedner argues one should only take recourse to in case censure alone cannot convey the messages listed above. The Belgian Criminal Code allows judges to take recourse to three types of main sanctions: a prison sentence, a fine, and/or community service. Apart from those sanctions, they can impose modalities such as electronic surveillance or probation. Henceforth I will use the word censure to refer to the need for or the eligibility of a societal reaction to the crime. When using the word sanction, I refer to those means for expressing censure enumerated by the Belgian Criminal Code.

SECTION I. DESCRIPTION OF RESULTS

Introduction

In order to deal with the third research question, I have structured this first section as follows: first I will address the participants' sentencing preferences, that is, their views on punishment in the specific case as they were expressed during the first wave interviews. Next I will concentrate on the factors that determined whether the participants accepted the judgement that had been pronounced in their case. I will start with victims' sentencing preferences (§1), then deal with offenders' sentencing preferences (§2), and after that will come to the results on whether and why the participants decided (not) to accept the judgement (§3).

§1. Victims' sentencing preferences

This first descriptive part deals with the participating victims' opinions on whether their offender should be censured and about how that should according to them be done.

§1.1. The guilt of the offender and the necessity of censure

All victims participating in the current study were convinced of the particular offender's guilt; they were consequently asked for their opinion on whether society, represented by a judge, should react to the offender's acts. All victims said that committing an offence is wrong and immoral, and that society should absolutely react to those transgressing the norm, thus confirming the necessity of censure. With one exception, they felt that the behaviour of the concrete offender therefore called for a reaction. Yet before going on to describe which reactions exactly victims believed to be the most appropriate, I will describe a number of general considerations that they took into account when reflecting on the question whether their offender should be sanctioned.

First, seven victims expressed **understanding for the offender and what (s)he had done**. An example is that of two victims who reasoned that people who behave aggressively, such as their offenders, often are people who just never learned that there are other ways to solve conflicts or are very low in self-esteem. In other words, the reason why someone commits a crime can lead to understanding. But it generally does not excuse or justify what happened. For example, one victim explicitly said that having had a difficult youth is not an excuse.

"Toen ze werd opgepakt hebben we ook gevraagd waarom ze het gedaan had, maar geen antwoord. Als ze had gezegd ik had geldproblemen, of een andere reden die wel te begrijpen is, dan was dat wel ça va geweest." (Male victim of theft (respondent 29), non-participant)

Second, four victims indicated that they would **feel guilty** or would **feel sorry for the offender** should (s)he be sanctioned, even though they realised that they were not to blame for the offence.

"Nu als je zegt van die werkstraf, dat hij voelt van omdat ik X. *(de respondent)* bij haar keel heb gehad moet ik dit nu doen, misschien wel. Maar echt in het gevang, neen. Dan heb ik weer compassie met Y. *(de dader)* dat die dat niet overleeft denk ik." (Female victim of intentional assault and battery (respondent 32), participant)

A third issue that infused victims' reflections about the necessity of imposing on the offender a sanction was that **if the accused would receive a sanction** his/her situation would become worse because (s)he would possibly **lose his/her job**, thus showing the importance to victims that the reaction to the crime is not such that it causes problems that might incite the offender to commit new crimes. Five victims expressed this concern.

"Goh, wij vinden niet dat iemand levenslang moet gestraft worden voor die feiten, want als je een strafblad hebt sleur je die feiten levenslang mee. Dat is zeker de geest die hier leeft, het ging dan ook om een nog vrij jong iemand... dat mag iemands toekomst niet hypothekeren." (Male victim of theft (respondent 37), non-participant)

A fourth consideration was **fear that if the offender would be sanctioned, (s)he would be eager to take revenge** on the victim. Three victims indicated that this fear may amount to such a level to make victims waive their right for compensation and hope that the sanction will not be too severe.

"Het enige waar ik een beetje bang voor ben, is dat als er te streng zou geoordeeld worden, dat hij ons komt zoeken." (Female victim of intentional assault and battery (respondent 1), non-participant)

"Ik kan dat aanvragen maar ik denk niet dat ik dat ga doen, want als hij ooit vrijkomt en hij moet schadevergoeding betalen, gaat hij mij dan niet terug aanpakken?" (Male victim of violent theft (respondent 19), participant)

Five victims mentioned a fifth consideration, *i.e.* **the offender's criminal record**. Three of them said that first-time offenders deserve a second chance and thus should not be sanctioned in a severe manner, but that seasoned offenders should be sanctioned severely. From another angle, two victims explained that they would not want the offender to end up with a criminal record as a consequence of the crime (s)he committed against them.

"Hebben die al een strafblad of is dat één keer gebeurd? Voor mij maakt dat wel een groot verschil. (…) Omdat je een tweede kans kan krijgen en ook nog een derde, maar dat is echt wel genoeg, en zeker als ze al een leeftijd hebben van over de twintig." ((Wife of) male victim of intentional assault and battery (respondent 12), non-participant)

One victim added a sixth consideration, which was **whether the crime was premeditated** or a spontaneous act of violence. In the first case the sanction should be harsher than in the second case.

A seventh consideration taken into account by a number of victims was **whether the offender showed remorse**. Three victims said that offenders not showing remorse should receive a more severe sanction than those who do, which shows the importance to victims of the offender realising that his/her behaviour was wrong and is intolerable. This stance confirms Zedner's point of view: sanctions are perceived as a last resort to be used only on offenders who do not realise that they have made a mistake, as there seems to be no other way to bring them to this realisation.

"Op dat vlak kun je wel zeggen dat als ze inderdaad berouw tonen, dat een eventuele straf wat milder mag zijn. Maar als ze nog altijd hun verantwoordelijkheid ontlopen, dan maar hardwillig om het hen te laten inzien." (Male victim of intentional assault and battery (respondent 22), non-participant)

Victims' opinions on the harshness of sanctions were furthermore influenced by the **slowness of the criminal justice system**. Some victims said that they would be more comfortable about the offender being sanctioned if the sanction would follow the crime immediately. They reasoned that if a prison sentence, for instance, is imposed months or years after the crime, the offender may again be leading a law-abiding life which is then put upside down by the sanction.

"Voor mij persoonlijk, zelfs al zou hij echt nu kunnen gestraft worden voor zijn daden en het zou een gevangenisstraf zijn, zou ik er minder moeite mee hebben – hij komt nu maar juist uit de gevangenis en dan is het gewoon even een verlenging daarvan – dan wanneer hij ondertussen zijn leven weer heeft opgepakt." (Female victim of intentional assault and battery (respondent 1), non-participant)

Noteworthy is that four victims explained that they may have an opinion on the punishment of their offender but that they were **not the offender's only victims** and thus could not judge about the sanction the offender would need to receive. This shows that there is a need for proportionality. Indeed, **proportionality** between the crime and the reaction to crime was considered very important. Many victims said that they would have been harsher should the offender have committed a more serious crime.

"Als het alleen mijn feit is he. Ik weet nu niet wat hij nog op zijn kerfstok heeft." (Female victim of intentional assault and battery (respondent 32), participant)

"Als je een hond zijn poep niet opgeruimd hebt, geef dan een alternatieve straf, maar niet voor iemand die iemand ineen geslagen heeft." ((Wife of) male victim of intentional assault and battery (respondent 12), non-participant)

A final consideration was that **the offender's confrontation with the police and the fact that he had been put in preliminary custody was sufficient punishment** according to the victim. Two victims reasoned that the offender had suffered sufficiently from being arrested and being put in preliminary custody; they therefore reasoned that there was no need to impose an 'extra' sanction.

"Neen, misschien, wat hij nu, want hij heeft toch ook al dat gedoe met politie en veel problemen thuis gehad (…). En dan moet daar niet echt een straf nog bij." (Female victim of violent theft and threat of arson (respondent 28), non-participant)

All these considerations play a role when victims form an answer to the question whether they believe that their offender should receive a sanction. In this context it is important to know that the victims in general did not report the crime in order to see the offender punished; the reason they did generally was in order for the offender to be stopped or reprimanded by an official. What they want is for the offender to finally understand that his/her behaviour is intolerable and hurts other people. This aim determines the type of reaction that is considered most appropriate, as will become clear.

§1.2. The most appropriate means for expressing censure

The above description allows concluding that the victims participating in the current study agreed that a response must follow the crime in order to show that the offender's behaviour is not tolerated. There is, in other words, a clear need for censure.[48] But when asked how censure would best be expressed, the vast majority of victims suggested reactions that are not sanctions following the terminology described above. Few victims wanted the offender to be sanctioned by means of a prison sentence, a fine or community service. Most victims preferred the reaction to the crime to consist of **therapy/treatment** (twelve victims) and/or **compensation** for their damages (nineteen victims). The rationale is that they believe that the first goal of the reaction to crime should be that it **makes the offender realise** what (s)he has done, in order to make sure that (s)he does not relapse. This wish determines which means they consider most appropriate for expressing censure.

"Ja. Ik vind dat hij de juiste straf moet krijgen. En ik hoop dat het iets is wat hem in de verdere toekomst kan helpen om terug goed te functioneren in de maatschappij." (Female victim of rape (respondent 38), participant)

[48] There was one exception; one victim did not consider the offender's act wrong.

Therapy was suggested in the interest of the offender and of one's own and societal safety. The victims attached great importance to the reaction to the crime putting their offender back on the right path, the reason for which was a need for safety. They wanted the reaction to the crime to be such that it would make the offender realise what (s)he had done and as such safeguard their own (fear of revictimisation by the same offender) and societal safety.

"(…) dat hij daaruit leert, dat hij echt beseft dat hij verkeerd was. (…) Dat dat echt doordringt." (Female victim of rape (respondent 38), participant)

"(…) waar het mij persoonlijk om gaat is dat die persoon beseft wat hij doet en dat hij er probeert aan te werken." (Female victim of intentional assault and battery (respondent 1), non-participant)

Those victims who sought for *compensation* in general only asked for compensation of the actual damages. None of them explicitly planned to ask for more than necessary – quite to the contrary, several of them said that they by no means wanted to 'make money' out of the offence. Two victims even said that it would be fine for them if the offenders paid a sum of money not to them but to charity – the aim is to make offenders feel that they were wrong, not to make money. What victims wished for was the compensation of medical costs, the costs they had made for installing new locks, etcetera. Of the nineteen victims planning to ask for compensation, only three said that they would ask for compensation of the moral suffering too. In the end, it was said, money does not serve victims' psychological recovery, so compensation need not go beyond what is necessary.

"De bemiddelaar zei je mag schadevergoeding vragen, maar (…) ik wist niet wat ik moest vragen. En dan was ik gaan horen bij het justitiehuis en daar zeiden ze dan, ah ja, die kun je uitkleden als je wil. Ik zeg jamaar dat is niet mijn bedoeling." (Female victim of intentional assault and battery (respondent 32), participant)

"Ik hoef zo niet per se het onderste uit de kan te halen ook niet, want dat helpt mij ook niet he." (Female victim of robbery (respondent 47), participant)

Let us now investigate to which degree the participating victims suggested that the reaction to the offender's behaviour should include a **sanction**. As said, the Belgian Criminal Code discerns between three main sanctions: fines, community services and imprisonment.

The victims who spontaneously only suggested that their offender should be obliged to take therapy and/or pay compensation were asked whether that would suffice, or whether they thought that the offender should in addition receive a sanction. Opinions were mixed. Victims saying that therapy and/or compensation sufficed were slightly in the majority, but there were others saying that

there should still be an additional sanction in order to convey the message that one cannot just get away with committing crime by compensating the victim for its losses or taking therapy. Also, there is a chance that the offender is not open to therapy, in which case punishment seems necessary.

"Maar wil die persoon dat *(therapie)* niet, ja… dan denk ik toch wel… dan moet er iets extra bijkomen. Want wat moet je anders doen? Ze zomaar vrijlaten en zeggen van doe maar de volgende?" (Mother of female victim of sexual abuse (respondent 50), participant)

"Ik hoop dat hij beseft dat hij fout bezig is en er iets aan wil doen, en dan ben ik tevreden met een straf bestaande uit serieuze begeleiding." (Female victim of intentional assault and battery (respondent 1), non-participant)

Three of the victims who suggested that therapy or compensation would suffice were slightly uncertain about their point of view because others had said that they were being too good on the offender. They felt that their environment dictated that they should be harsher. Two of these three victims explained their 'lenient' point of view with a reference to the fact that they know that the offender is not a bad person, that he has a good side too, or that the amount of compensation that the offender agreed to pay during mediation for him is a month's wage and thus a lot of money. The fact that they know their offender may explain their more lenient views. I come back to this later on.

"Ik denk dat ik nu eigenlijk nog te braaf ben, met te zeggen dat therapie voldoende is. Ik denk dat er mensen zijn die inderdaad uit zijn op een goeie straf, maar zo zit ik niet ineen. Hij heeft zijn goede kanten ook, daarmee." (Female victim of stalking (respondent 2), non-participant)

Three victims suggested that the offender should be ordered to pay a **fine**. The reason why few victims suggested this sanction is that there is a strong feeling that offenders in general are not sufficiently prosperous to pay fines and that on those who are, a fine does not have any impact.

"Ik heb de indruk dat een financiële straf voor die mensen nog het meest ingrijpend is. Dat voelen ze. De rest…" (Male victim of burglary and theft (respondent 51), non-participant)

Ten victims thought **community service** would be an appropriate sanction for their offender. Many of them justified their choice for community service by contrasting it with imprisonment. It is better for offenders to make themselves useful to society, they reasoned, than to be put in prison, where they do nothing useful. Still three victims considered community service too lenient a sanction.

"En dan zouden ze beter een straf geven waar ze maatschappelijk, waar ze zich ergens nuttig kunnen maken, want die mensen ergens in een gevangenis steken, dan komen ze in een crimineel milieu terecht, dat gaat de zaak niet verbeteren." (Male victim of burglary and theft (respondent 51), non-participant)

"Dat is een dagje uit, zo van die alternatieve straffen, dat zie ik niet zitten." (Male victim of intentional assault and battery (respondent 12), non-participant)

The victims participating in the current study strongly disapproved of **imprisonment**. No less than thirteen victims spontaneously said that they would not want the offender to be sent to prison. Most argued that locking up people in a criminal environment only makes things worse. One victim said that she would have compassion with the offender. Another one reasoned that imprisonment would not serve any purpose because her offender had already served a prison sentence in the past and obviously had not learned from it as he relapsed. Others reasoned that it is better for society if the offender is ordered to perform a community service. Finally, a woman who had been victimised by her husband said that if he would be sent to prison she would be punished too, as it would become very hard for her to combine her work with raising her children. Three victims thought that imprisonment is not that bad – one used the word "hotel" – but none of them was in favour of imprisonment, for the reasons spelled out above. A look at these reasons again confirms that what victims aim for is for the offender to realise that (s)he was wrong. Offenders need to change their behaviour; imprisonment in these victims' opinions does not contribute to that aim.

In the end, two victims said that they would prefer a prison sentence to be imposed on their offender. They explained that offenders should simply be taken of the streets before they do more harm; a rationale that is generally known as incapacitation. These people's wish for imprisonment was not inspired by mere revenge but by a concern for societal safety. The offender is perceived as a danger to society and therefore should be kept under lock and key.

"Wat ik daar nog wel over kan zeggen is, gevangenissen (…) je hoort er zoveel negatieve dingen over, dat dat mensen echt niet helpt, dikwijls integendeel, als ze dan vrijkomen hervallen ze vaak of is het van 'help, de wereld, ik weet niet hoe wat waar'." (Male victim of theft (respondent 37), non-participant)

"Ze zitten nu in het gevang *(in voorbechtenis)*. Dat ze daar maar blijven zitten he. Ze zitten daar op hun plaats. (…) Dan kunnen ze niemand lastigvallen." (Male victim of violent theft (respondent 15), participant)

Finally, **other sanctions** that were suggested were electronic monitoring (N = 1), a contact ban (N = 3) and a prohibition to be employed in a specific branch (N = 1). Some victims hoped that a **conditional sanction** would be imposed, so that they as victims would have a stronger position in

case the offender would commit new offences. Also, they hoped that it would prevent the offender from reoffending. Again it was a desire for safety driving these victims' preferences.

"Ik zou wel een straf opgelegd willen zien waarvan ze schrik heeft, voorwaardelijk dan, naar de volgende keer toe. Ik denk dat dat in zo'n gevallen ook wel kan helpen." (Father of male victims of intentional assault and battery (respondent 6), non-participant)

A general observation is that **victims rarely expressed a specific preference on the length of the sanction** to be imposed on the offender. Few of them suggested a specific number of months in prison or therapy or a specific amount of compensation. The reason seems to be that they are not sufficiently aware of what is usually pronounced in cases such as theirs.

"Maar vraag mij nu niet, moest ik nu moeten zeggen om een termijn op een gevangenisstraf te zetten, dat zou ik echt niet weten." (Female victim of intentional assault and battery (respondent 1), non-participant)

Those victims to whom the offender was no stranger **tailored sanctions to fit the concrete offender's character or situation** (family or financial). They reasoned for example that it would be useless to condemn their offender to pay a fine because he does not have the money to pay it, or to the contrary that the only way in which their particular offender could be made to realise his mistake would be to impose on him a fine because he is a stingy person. Someone reasoned that it is no use to put a mother of four children in prison; another said that the worst punishment for her son (the offender) was to take him away from his family. When these victims were asked whether their opinion on punishment would be different if they would have to **judge a stranger** who committed similar acts, some said that it would indeed; they would want the reaction to be more severe.

"Y. *(de dader)* is mijn man he. De andere is een vreemde waar ik geen gevoelens voor heb." (Female victim of partner violence (respondent 16), participant)

"Mensen die zoiets doen mogen van mij op een andere manier bestraft worden. Maar in dit geval heeft dat geen nut *(beklemtoont dat)*. Je moet dat zien van persoon tot persoon." (Female victim of stalking (respondent 2), non-participant)

Most importantly, three victims felt **a dissonance between the means for expressing censure/the sanction that they believed to be the most *appropriate* for their offender and the one that they considered the most *fair and just*.** For example, a victim who was convinced that a therapy would be the most appropriate means of expressing censure in her offender's case added that

therapy was not in fact a fair reaction. In fact, so she said, people who engage in the kind of conduct her offender engaged in deserve to be imprisoned. But imprisonment would only make things worse for the particular offender. Another victim said that a societal reaction to crime that expresses acknowledgement of the victim's hurt is a fair one, whereas the most appropriate reaction is one that is tailored to the specific offender. The one does not preclude the other: the most appropriate yet not most fair reaction also can convey a message of victim acknowledgement.

"R: Ik denk, de straf die ik voor ogen heb is therapie en hem helpen. (…) Ik denk dat je evengoed kunt zeggen van, een gevangenisstraf is even rechtvaardig voor een bepaalde tijd. Maar of ze dan juist is in mijn ogen, dat is iets anders. (…)
V: Rechtvaardig en juist is niet hetzelfde?
R: Neen.
V: Kun je dat verschil duiden?
R: Dat is heel moeilijk he. Maar rechtvaardig betekent voor mij dat je erkenning krijgt als slachtoffer van er is iets gebeurd wat niet kan. En dat zijn de gevolgen. De juiste straf is meer dadergericht. Voor mij is rechtvaardig meer als slachtoffer, dat je zegt van, ok, er is iets gebeurd en die dader wordt gestraft. Dat is rechtvaardig. Maar de juiste straf is dan, vind ik, meer naar de dader toe gericht. Dat je zegt van, wat is voor díe persoon nu eigenlijk de vertaling van die rechtvaardigheid. Hij wordt gestraft, en dat is voor mij eigenlijk de rechtvaardigheid. Maar wat dan de juiste straf is…" (Mother of female victim of sexual abuse (respondent 50), participant)

A final note is that though the majority of the victims did not feel vengeful or punitive, they did strongly feel that **offenders should appear before a court of law**. Even those who did not ask for a sanction to be imposed thought it was extremely important that their offender would be reprimanded by a judge because that would in their view have much more impact on him/her than him/her being reprimanded by family members or friends. In this respect I may refer to the finding reported in the previous chapter that victims want judges to speak to offenders in a respectful yet firm way – like Duff (2002: 93) writes: "the tones in which he is addressed by others in the process (…) should be not the neutral tones of bare description, but the normative tones of censure and criticism – of blame. This is not to say that those tones must be hostile, or such as to humiliate him or exclude him." Indeed the goal of this public exposure as expressed by the victims was not to publicly embarrass their offenders but to make sure that they would get the message that what they did was wrong and that their behaviour is not tolerated by society.

§1.3. The relation between respectful treatment and the wish for censure/sanction

Procedural justice theory has advanced the thesis that fair procedures facilitate the acceptance of the outcome. This thesis presupposes a relationship between the fairness of procedures and acceptance

of the outcome. The current study aimed to find out whether there is also a **relationship between the fairness of procedures and victims' opinions on the most appropriate means for expressing censure**. Victims were asked to comment on the statement "If I feel that I have been treated fairly in this case, it will be easier for me to accept a verdict/sanction that does not match the verdict/sanction that I have in mind." When needed the statement was made more concrete by asking the respondents additional questions, such as: 'Can you imagine that your attitude towards the verdict/sanction would change if the police treated you disrespectfully?', 'Would unfair treatment by the police influence your opinion about the most appropriate verdict/sanction for the offender?'.

The majority of victims said that there is no relationship. They said that the way a judge chooses to censure offenders should not depend on how concrete offenders' victims were treated by officials. Offenders, it was argued, should be judged on their deeds; they should not atone for bad treatment of their victim(s) by the police as it is not their fault if the police behave rude to these victims. Only a small number of victims said that they could imagine that if they would feel treated unfairly by the police they would demand a harsher punishment to compensate for this. But they were quite hesitant, could not really explain why, and none of them had actually experienced this feeling.

"Dat de politie mij afsnauwt of gebakjes voorzet, dat heeft geen effect op de straf." (Male victim of violent robbery (respondent 49), participant)

"Als je je oneerlijk behandeld voelt ga je toch ergens als tegenkanting een zwaardere straf vragen. (…) Je probeert iets te recupereren. Ik denk dat dat menselijk is. Als je je slecht voelt wil je ergens toch iets wat dat wat terug bijpast." (Male victim of intentional assault and battery (respondent 12), non-participant)

§1.4. The relative importance of censure/sanction and fair treatment

In order to assess the relative importance of censure/sanction and fair treatment, victims were asked to comment on the statement "It does not matter to me how the police and the judicial actors treat me, as long as they make sure that the defendant is punished". Without exception victims said that it is very important to them to be treated well, and most added that it is near impossible to choose between the two and say which is more important. Three said that in the end what is most important is that one receives compensation for one's losses or that the offender receives a sanction, though these respondents too indicated that being treated politely is very important. Most interestingly, one victim said that he would feel cheated if the judge would behave politely and friendly in court but afterwards acquit the offender, which reminds of results reported in chapters five and six and casts doubts on the relevance of confronting people with statements such as this one. In fact, they expect fair treatment to result in a fair outcome, and vice versa.

"Ergens zou ik altijd het positieve eruit halen van, we mogen blij zijn dat we het terug hebben. Voor hetzelfde geld zijn ze ik-weet-niet-hoe-vriendelijk maar krijg je niks terug. (…) Ze mogen nog zo vriendelijk zijn als ze willen, uiteindelijk is het wel de bedoeling dat je terugkrijgt wat van u is." (Male victim of theft (respondent 29), non-participant)

"Niet helemaal mee eens en niet helemaal mee oneens. Ik vind het belangrijk dat wij als slachtoffer rechtvaardig behandeld worden maar anderzijds is het ook belangrijk dat zij de gepaste straf krijgen." (Female victim of burglary and theft (respondent 42), participant)

"Ik denk naar mij toe, dat het voor mij belangrijker is dat ik fatsoenlijk word behandeld dan wat de dader zijn straf is." (Female victim of intentional assault and battery (respondent 32), participant)

§1.5. The need for decision control on the outcome of the trial

As part of the quantitative survey, respondents were confronted with five statements measuring their wish for involvement in the decision on the outcome of the trial. These were: (1) "[It is important that] the judge will take my opinion on sentencing into account"; (2) "[It is important that] the judge will allow me to give my opinion on the sanction that should be imposed"; (3) "[It is important that] I will be able to co-decide on the verdict and the sanction"; (4) "[It is important that] I will have the right to veto the judge's decision" and (5) "[It is important that] I will be able to exert influence on the judge's decision". The results show that victims welcome the opportunity to voice their opinion on the outcome in court, but that support for the statements declined the more they involved decision control. For two reasons, victims feel that it is not up to them to decide on the punishment to be inflicted on their offender. First, the judge's neutrality, which is vital for the administration of justice to function well, would be affected. Second, they felt that maybe in their case it would be good to have decision control because they are not punitive, but that on a societal level a suchlike system is undesirable since it could lead to the imposition of disproportional sanctions.

"Wat gaat er op den duur gebeuren als je zelf mag beslissen? Dan gaan we naar Amerikaanse toestanden." (Female victim of intentional assault and battery, threats and vandalism (respondent 44), non-participant)

"Dat is zeer onwaarschijnlijk. Ik denk dat het justitiesysteem dan niet meer kan werken." (Male victim of burglary and theft (respondent 51), non-participant)

The fifth statement turned out to be interpreted in another way than intended. The Dutch wording of the statement ("Ik erin slaag de beslissing van de rechter in mijn gewenste richting te beïnvloeden") elicited many negative reactions. The word "beïnvloeden" (influence) was perceived

by many respondents as a very negative thing; they thought it pointed to trying to influence the judge through illegitimate means, such as bursting into tears. The large majority of victims disapproved of such techniques; they believed that one should always be honest in court and should not use various techniques to influence the judge. The statement was not originally intended to point to the use of such techniques; it aimed merely to gauge whether people would like to have an influence on the decision just by telling their story. But the statement obviously was interpreted otherwise and thus leads to the conclusion that victims disapprove of people using e.g. emotions to influence the judge. The statement was excluded from the quantitative analysis because of the confusion surrounding it.

§1.6. Summary

Summarising and concluding this part on victims' opinions on punishment, what was most important to the victims participating in the current study was that societal reactions to crime serve the purpose of educating offenders in order to make them desist from crime. Prevention of future victimisation was a number one priority to victims, both on a personal and on a societal level. The majority of victims expressed a preference for imposing on the offender a therapy and/or the compensation of damages, which are not sanctions. The sanction that was most supported and suggested was community service; fines and prison sentences were considered ineffective. But even if the victims felt little need for imposing on the offender a sanction, the first element of punishment, *i.e.* censure, was considered crucial. They almost unanimously said that it is necessary for offenders to be sent to court and to be confronted with a judge, because this confrontation is more likely to convey a message of disapproval than hearing from one's own environment that what one did was wrong.

§2. Offenders' sentencing preferences

In this part I will first go into the issue of whether the offenders participating in the current study accepted that they would be brought before a judge and then will elucidate on the means that they considered most appropriate for expressing censure towards them.

§2.1. Acknowledgement of responsibility and the acceptability of being brought to court

Eighteen of the twenty-three offenders participating in the current study acknowledged that they had engaged in incorrect behaviour; five denied responsibility for having committed a crime. One of these five said that he was truly innocent; the other four acknowledged that they had performed the acts that had led to the accusations, but three of them did not consider what they had done a wrong thing to do and one explained that there had been no malicious intent.

All offenders were asked during the pre-trial interviews whether in their opinion it would be acceptable for a judge to censure them. Of the eighteen offenders admitting that they had done something wrong, sixteen said that society has a right to censure them. The other two said that they had had no malicious intent and therefore should not be censured.

"Ik vind persoonlijk, als ik morgen een diefstal bega en ik heb dat gedaan en ik word veroordeeld, dan heb ik mijn straf verdiend. Zo simpel is het. Als je iets doet dan weet je waaraan je je gaat wagen. Dan moet je maar tegen de muur lopen." (Male offender, intentional assault and battery (respondent 7), non-participant)

"Natuurlijk, ik verdien gewoon een straf. (…) *If you can't do the time, don't do the crime*. Word je ervoor gepakt, dan moet je je tijd ervoor doen." (Male offender, robbery (respondent 27), non-participant)

"Als je het niet gedaan hebt… Mannen, als je het gedaan hebt dan weet je dat het je verdiende loon is. Maar als je het niet gedaan hebt…" ((Mother of) male offender, intentional assault and battery (respondent 26), participant)

Before embarking on the description of which means for conveying censure the offenders considered most appropriate I will describe the concerns that they expressed concerning punishment.

One major issue among the offenders was **outcome fairness**. They strongly felt that any sanction imposed on them would have to be proportional to the one that accomplices receive, in the sense that the degree of guilt should be taken into account. One said for example that his accomplices had committed forty raids while he had accompanied them on only two of these. Therefore he would have trouble accepting that all would receive equal sanctions.

"Ik verdien gewoon een straf, alleen, naarmate zij maximum tien of vijftien jaar kunnen krijgen, en zij hebben veertig overvallen gepleegd, en ik ben er maar bij twee bij geweest (…) Ik wil best drie jaar zitten, naargelang wat zij krijgen." (Male offender, robbery (respondent 27), non-participant)

A second issue among these offenders was **proportionality** between the offence and the sanction. They felt that it would be disproportional to e.g. be sent to prison for breaking and entering without stealing anything or to be ordered to pay a larger amount of money as compensation than what was stolen. This points to a just deserts perspective. Arguments on proportionality also included that the crime committed was not all that serious because there was no human suffering involved, at least not physical. Some for this reason considered that a lenient sanction should be sufficient.

"Stel dat, ik weet niet, dat ze u wegsteken of zo, dat zou wel grellig zijn voor zoiets stoms." ((Father of) male offender, burglary and theft (respondent 41), participant)

"Hetgeen ik uitgestoken heb is niet goed te praten, maar er zijn nog ergere zaken, die helemaal niet goed te praten zijn, waar menselijk leed bij berokkend is. Wat ik eigenlijk voorgehad heb, ja, dat is zuiver materieel. En ik vind, ja, als die mensen hun kosten vergoed zijn, ja, …" (Male offender, theft (respondent 14), participant)

Two offenders said that if they would find themselves sanctioned disproportionately severe, next time they would not restrain themselves and do even worse things.

"Als die zegt van kijk meneer, u mag dit nooit meer doen, dat is een voorwaardelijke straf, dan zeg ik ja, ok. Als hij zegt, sla hem in de boeien, die gaat voor acht maanden de cel in, effectief, ja, dan denk ik in mezelf, had ik dat geweten dan had ik beter [het slachtoffer] z'n been gebroken. Dat is nu cru gezegd, maar snap je? Dat zou ik er wel een beetje over vinden." (Male offender, intentional assault and battery (respondent 34), participant)

A third issue was **disparity**. Two offenders pointed out that they have witnessed other, equally serious or more serious crimes not being prosecuted while their case is, whereas a recidivist offender complained about the fact that no two people committing similar offences ever receive the same sanction. He believed this causes feelings of unfairness not only among those receiving the sanction, but also among the victims who witness that 'their' offender is not punished to the degree other victims' offenders are.

"Het probleem hier in België is ook zeker van, ik mag hier nu morgen iemand op z'n gezicht slagen en iemand anders doet dat, je krijgt nooit dezelfde straf. De ene krijgt tien maanden en de andere maar drie maanden. Ze zouden veel consequenter moeten zijn. (…) Want dat zorgt uiteindelijk alleen maar voor frustraties." (Male offender, intentional assault and battery (respondent 31), participant)

Despite the disapproval of disparity, some feel that judges should take into account individuals' particular circumstances when deciding on the verdict and/or sanction. For example, three offenders said that judges should take into account the detrimental consequences of imposing financial sanctions on people living in straitened circumstances. Another offender remarked that he had been leading a good life for years and had finally succeeded to build a life including marriage and being a homeowner when he was sent to prison for offences that he committed years before. Judges, he said, should take into account that people's lives have changed and that they are back on the right path.

"(…) stel dat ze mij toch gaan beboeten, hoe moet dat opgelost raken? Centen heb ik niet, er is geen overschot van mijn inkomen, want mijn schuldbemiddelaar moet zelfs nog spelen om rekeningen te kunnen betalen, want er zijn soms rekeningen bij die een paar maanden moeten wachten en zo. En ja, als daar dan nog eens iets tussen komt…" (Male offender, theft (respondent 35), non-participant)

"Ze hebben het mij pas jaren later, terwijl ik dan op dat moment goed bezig was met mijn best te doen, nog moeilijker gemaakt. En er zijn heel veel mensen die daarop crashen." (Male offender, intentional assault and battery (respondent 8), non-participant)

Offenders furthermore brought up that certain sanctions **affect not only them but also their family**. They elucidated on how their family would be affected should they be sanctioned to imprisonment or a large fine and felt that judges should take that into consideration.

"Vooral omdat ik daar niet alleen slachtoffer van ben he. Mijn kinderen zijn mee slachtoffer. Die boetes zijn gelden die hen niet meer ten goede kunnen komen. Als ze alleen mijzelf zouden kunnen straffen, dan zou ik me daar beter kunnen overzetten. Maar het feit dat dat op heel uw gezin een weerslag heeft…" (Female offender, burglary and theft (respondent 4), non-participant)

A fifth issue, discussed by four offenders, is **joint liability**, *i.e.* the rule that each of the accomplices to a crime may be summoned to pay the full amount of compensation regardless of their individual share in the crime. Those who found themselves at risk of this considered it an extremely unfair rule.

"Ik ben er wel bang voor dat als zij hun verantwoordelijkheid niet willen dragen, dat ik al dat geld ga moeten betalen. Want ik neem wel verantwoordelijkheid. En daar ben ik het niet mee eens. Dat is geen eerlijk rechtssysteem. Als de verzekeringsmaatschappij zegt, uit andere dossiers moet nog zoveel betaald worden (…) en zij zeggen wij betalen niet, dan komt het allemaal op mijn dak." (Male offender, robbery (respondent 27), non-participant)

Offenders when asked whether they would suggest **the same sanction for anyone else** that committed the same crime said that they would. One did add the condition that those others would also pay compensation to their victims spontaneously and collaborate well with the police and the criminal authorities, as he had done himself.

"V: Zou u dat ook vinden voor eender wie die de feiten heeft gedaan die jij hebt gedaan?
R: Dezelfde feiten, ja. Als ze ook meewerken natuurlijk. Als ze niet meewerken of niet betalen, dan mag het wel strenger natuurlijk he." (Male offender, fraud (respondent 33), participant)

Offenders with a **criminal history** were quite concerned about the influence of their criminal record on the judge's decision; they consider it unfair that their past is always taken into account when appearing before the judge for new crimes. This reminds of the results reported in chapter five and six on the issue of neutrality.

Finally, some participants said that they deserved to be censured but that they **had already been punished even before the case got to court**. Three offenders, all young men, said that the night(s) that they had had to spend in preliminary custody had been sufficient punishment for the crime that they committed. What is to be concluded from this is, first, that offenders may feel that they should be punished but may still proclaim that they do not deserve to be brought before court and, second, that proportionality is an important principle for offenders.

"Ja, ik vind dat we een straf verdienen, maar ik vind dat we al een groot deel van de straf hebben gehad. Met dat we tien dagen in de gevangenis hebben gezeten. Drie maand thuis hebben gezeten. En nu hebben we een plaatsverbod in (stad), we mogen niet in de stad komen van zeven uur 's avonds tot zeven uur 's morgens. Ze hebben ons al wel best veel straf gegeven." (Male offender, violent robbery (respondent 48), participant)

§2.2. The most appropriate means for expressing censure

Those offenders who said that they deserved to be tried by a judge were asked which means for expressing censure they considered most appropriate. Replies to this question show differences between recidivist offenders and first-time offenders. Those with a previous experience with the criminal justice system answered the question in terms of sanctions, that is, their answers often included a reference to imprisonment, community service, or a fine. They know which favours exist (probation, deferral of delivery of a sanction, suspension of the sanction), how community service works, etcetera. First-time offenders more often said that they had no idea what to expect.

"Als je werk hebt en je bent op dat moment kalm en je hangt niet de onnozelaar uit, ga je geen gevangenisstraf krijgen. Tenzij het al de dertiende keer is." (Male offender, partner violence (respondent 17), participant, recidivist)

"Ik weet eigenlijk totaal niet wat ik moet verwachten, wat ze geven of zo." (Male offender, intentional assault and battery and vandalism (respondent 9), participant, first-time offender)

Four offenders said that the most logical thing would be to **pay compensation** to their victims for the damage caused; two of these four did think that compensation for moral damages is nonsense.

"Als ik schade toebreng aan iemand, dan moet ik daarvoor opdraaien. Als morgen iemand een raam uit mijn auto slaat, dan wil ik ook graag dat die dat betaalt en daarvoor opdraait." (Male offender, intentional assault and battery (respondent 34), participant)

Seven offenders considered a **fine** the most appropriate punishment, yet it should be mentioned that in some cases it was not clear whether the offender was talking about a fine or about compensation.

Two others heavily feared being sanctioned to pay a fine, the reason for which being that they found themselves in a precarious financial situation. One of them said that the only one that gets better from offenders paying a fine is the state – she herself would be better off if she could spend the money that she would need to spend on a fine on the therapy that she urgently needed.

"Dat zou mij een sterk gevoel van onrechtvaardigheid geven. Niet zozeer om die boetes op zich, maar (…) die boetes, dat maakt dat je het nog eens moeilijker hebt om uit de put te geraken, want professionele hulp kost enorm veel geld, daar heb je het geld niet voor." (Female offender, burglary and theft (respondent 4), non-participant)

Therapy was suggested by two offenders; one who committed a sexual offence and one whose crimes had been partly due to her alcohol addiction. Both said that taking therapy would be the only way to make them desist from crime. One of them added that taking therapy in fact would be much harder for him than spending some extra years in prison because it would require him to face his problems while otherwise nothing would be required on that level.

"Want begeleiding volgen buiten, ik denk dat dat een zwaardere straf zou zijn dan mij hier op te sluiten, want er wordt met u niks gedaan he. (…) Omwille van wat ik hier gedaan heb, moet ik daar drie jaar voor in den bak zitten? Is daarmee het probleem opgelost?" (Male offender, sexual abuse (respondent 53), participant)

None of the offenders suggested that they should be **imprisoned**. Nine fulminated against imprisonment, citing the same reasons than victims did, *i.e.* that offenders spending time in prison are useless for society in comparison to those performing community service, that imprisonment is inhumane, that it is not good for young offenders to be put in a criminal milieu, and finally that offenders easily lose their jobs when imprisoned, which makes their situation even worse.

Seven offenders believed the most appropriate sanction would be to order them to perform **community service**. A young offender believed this would allow him to still make the best of his future, whereas spending time in prison would be more likely to lead him to the wrong path. Another reason given for the preference for community service is that it is better to serve society than to waste one's time in prison. Finally, **other sanctions** that were proposed were probation and conditional prison sentences (N = 3) or a warning (N = 1).

§2.3. The relation between respectful treatment and acceptance of the outcome of the trial

In order to test procedural justice theory's prediction that fair procedures provide for a cushion of support that makes it easier for those subject to a decision to accept it, offenders were during the pre-trial interviews asked to comment on the statement "It will be easier for me to accept an

outcome that I disagree with in case I have been treated with respect". Replies to the statement suggest that pre-trial, offenders believe that they will assess the outcome of the trial in itself, that is, that the acceptance of the sanction will not to be influenced by whether one was treated with respect by the criminal authorities.

"Dat heeft niks met elkaar te maken. Het is niet dat als hij vriendelijk goedendag zegt en de andere in het voordeel gaat trekken, dat ik zeg, ja ik heb straf, maar het was toch een vriendelijke hoor." (Male offender, intentional assault and battery (respondent 8), non-participant)

"Dat vind ik moeilijk. Je kunt het langs twee kanten… De straf die bepaalt uiteindelijk toch nog alles, ook al ben je de hele tijd perfect eerlijk behandeld. Als uw straf dan overdreven is, dan voel je je echt slecht he." (Male offender, theft (respondent 39), non-participant)

§2.4. The relative importance of censure/sanction and fair treatment

Just like victims, offenders were asked to comment on a statement formulated in such a way as to compare the relative importance of not being punished too severely and being treated with respect. The statement was: "It does not matter to me how the police and the judicial actors treat me, as long as they make sure that I will not be punished too severely". Though all offenders said that it is important for criminal authorities to behave with respect, a number of them claimed that they would indeed accept a judge treating them impolitely as long as (s)he would pronounce a mild sanction. They explained that the consequences of punishment last longer than the unpleasant experience of being treated disrespectfully.

"Zolang je vrijgesproken wordt zeg je, mogen ze hier met tien man met kanonnen op mij geschoten hebben." (Male offender, intentional assault and battery (respondent 31), participant)

"Ja, allez, als dat nu niks invloed zou hebben op de straf die ik zou krijgen, dan mag die mij een uur lang uitschijten. Als ik nu geen straf zou krijgen, dan mag die mij drie dagen uitschijten en achtervolgen." (Male offender, burglary and theft (respondent 41), participant)

Still, the quote below, showing the importance of respectful treatment, comes from the same offender as the first quote above.

"Dat is een héél verkeerde stelling. Dat maakt, zeker wat de politie betreft, dat maakt wel uit hoe die tegenover u doen." (Male offender, intentional assault and battery (respondent 31), participant)

Others had more trouble 'choosing' between respectful treatment and a mild sanction; they said that even if they would be acquitted they would keep remembering how they had been treated and feel bad about it.

"Ik vind alletwee toch belangrijk. Dus de behandeling en de zwaarte van de straf. Als ze mij brutaal behandelen en ik heb niks van straf…. pfff, ik vind toch alletwee een beetje." (Male offender, fraud (respondent 33), participant)

"Je gaat die situatie van hoe die u hebben behandeld, daar ben je slecht van, dat vergeet je nooit, dat vertel je verder. Echt waar." (Male offender, intentional assault and battery (respondent 54), non-participant)

Finally, one offender explained that it is rare for judges to treat an offender friendly in court but pronounce a severe punishment, and, conversely, that it is rare for a judge that behaves arrogantly towards the offender in court not to pronounce a severe sanction. Another one said that no fair outcomes can result from unfair procedures.

§2.5. The need for decision control on the outcome of the trial

Offenders too through the quantitative survey were confronted with five statements measuring their wish for involvement in the decision on punishment by the judge. The statements were: (1) "[It is important that] the judge will take my opinion on sentencing into account"; (2) "[It is important that] the judge will allow me to give my opinion on the sanction that should be imposed"; (3) "[It is important that] I will be able to co-decide on the verdict and the sanction"; (4) "[It is important that] I will have the right to veto the judge's decision" and (5) "[It is important that] I will be able to exert influence on the judge's decision".

The t-tests showed a significant difference between offenders and victims as for their need for decision control: offenders scored significantly higher on the second, third and fourth statement (for the details, see annex 9). Those offenders who were enthusiastic about the statement on co-deciding on the verdict and the sanction were asked how exactly they would organise this. They envisaged a system in which they would propose a sanction; this proposal could then be discussed with the judge to in the end agree on a sanction. One made the comparison with victim-offender mediation. He liked the thought of a suchlike system because it would mean that the judge and the offender would be equals whereas now he strongly feels that judges feel superior. Others equated a system in which offenders get to co-decide on their sanction with manipulation and understood the judge to be the only one who has the right to decide on sanctions. Yet opinions are not always straightforward: the two quotes below, illustrating contradictory stances, come from the same offender.

"V: Hoe zie je dat gebeuren?
R: Gewoon dat ik een voorstel kan doen, ik heb dit gedaan (…). Dat ik kan zeggen: dit vind ik gepast. (…) Zoals bij die herstelbemiddeling." (Male offender, robbery (respondent 27), non-participant)

"Met mijn mening over de straf rekening houden, dat vind ik eigenlijk niet zo heel erg belangrijk, want ik heb daar niks over te zeggen, ik ben geen rechter. Ik kan mijn mening wel zeggen, maar mijn mening was ook wel dat ik het gerechtigd vond om daar geld te gaan halen, haha." (Male offender, robbery (respondent 27), non-participant)

One respondent liked the idea of co-deciding on the sanction but reasoned that if offenders would be permitted to co-decide on the sanction so would victims, and this he thought was detrimental as victims in his opinion would always be after the harshest sanction possible.

Finally, offenders, like victims, strongly associated the fifth statement, asking respondents if they would like to be able to influence the judge's decision, with manipulation, bribery, blackmailing and threatening the judge. They too feel that all parties should behave honest and truthful in court.

"Ik denk toch niet dat dat kan, want dan zijn we toch wel over heel veel geld aan het spreken. En omkoopaffaires, chantage, dat vind ik toch maar… neen, want dan gaan er heel veel schuldigen vrijlopen en dan wordt het ook maar een kakafonie denk ik." (Male offender, intentional assault and battery (respondent 54), non-participant)

§2.6. Summary

Summarising the results reported above, the offenders who felt responsible for the crime all agreed that it is right for society to censure their acts by means of a sanction. The sanctions most often proposed were fines and community services; imprisonment was heavily disapproved of. Offenders on the one hand attach considerable importance to consistency in punishment, but on the other hand urge that judges should take into account each individual's particular situation when meting out the sanction. The consequences of being punished are considered important not only for oneself; often references are made to the consequence of one or another sanction for one's family. Finally, opinions on whether offenders should be involved in the choice of the sanction to a greater degree were mixed, but they scored significantly higher on the statements on decision control than victims.

§3. Victims' and offenders' acceptance of the judgement

In this part I will look into the factors that influenced the respondents' decisions on whether the outcome of the trial was acceptable to them and those that determined their decision on whether or not to appeal the judgement. Both issues are important with a view to determining whether the participants' sentencing preferences can be called moral mandates.

§3.1. Factors influencing the acceptance of the judgement

The question to be tackled in this part is: on what grounds did the participants to this study assess the outcome of the trial? Two of the three theoretical perspectives guiding this study (the value protection model and fairness heuristic theory) make predictions about the factors that determine the acceptance or rejection of outcomes of decision making processes.[49] Defenders of the value protection model state that when litigants have a moral mandate about the outcome, the perception of fairness of the outcome is determined primarily by whether or not it matches this moral mandate. Fairness heuristic theory predicts that people search for information on fairness as a surrogate for trust, and that these fairness judgements in turn are based on the information that is available first – this was called the primacy effect. In a criminal justice context, this would mean that fairness judgements are based first and foremost on procedural fairness information. Below I describe which factors determined perceptions of fairness of the outcome of the trial in order to assess these claims.

By far the most significant ground on which the outcome was judged was **proportionality**. Five victims and nine of the ten offenders participating in the post-trial interviews reflected on whether the sanction pronounced was proportional to the offence. Some notes of interest fit here. One victim and two offenders pointed out that when considering whether the sanction is proportional to the crime one should not only consider the actual sanction but also take into account what offenders have gone through before trial (e.g. having been held in preliminary custody). Furthermore, two victims explicitly said that offenders should not be punished overly severe because doing so might create new problems.

"Dat *(de gevangenis)* is eigenlijk een echte hel waar je in zit en dat misdrijf dat je gepleegd hebt is toch niet zó groot vind ik." (Male offender, theft (respondent 14), participant)

"Ik leg mij daarbij neer dat ik tachtig uur heb gekregen, maar stel u voor dat ik 300 uur had gekregen, ja dan had ik zoiets van, euh…" (Male offender, intentional assault and battery (respondent 8), non-participant)

"Je moet een signaal geven dat het niet mag, maar je moet ook niet gaan overdrijven dat je geen dingen stuk maakt zodat je problemen creëert eigenlijk." (Male victim of violent robbery (respondent 49), participant)

[49] Procedural justice theory does not make clear predictions on how people assess the *outcome* of a trial; it does not offer criteria that people use to assess outcomes of decision making processes as it is a theory of procedure.

Another important determinant of satisfaction with the judgement for participants was the **consequence of the judgement** for themselves (both victims and offenders) or for the perpetrator (victims). For example, offenders reflected on the financial consequences of them having been sentenced to a fine or on the consequence of the outcome of the trial for their (search for a) job. One offender remarked that the sentence was not such that it would be more likely to prevent him from committing future offences, and one said that the trouble with the sanction pronounced was that he would be transferred to another prison and thus would have to start with the therapy he had been taking all over again, whereas he had finally found a psychologist whom he trusted. Someone reflected about the effect of him being sentenced for hitting his stepson on his authority as a parent and about the fact that the sanction was such that his term in prison had not changed.

Turning to victims, the father of two young children explained how the acquittal of the offender conveyed on the children the message that the perpetrator is not doing anything wrong hitting them. Another example is that of people who had been victimised by someone close to them: they were more satisfied with a mild judgement because a severe sanction (e.g. the offender being sent to prison) would also have seriously affected them in a negative way (e.g. having to raise the children on one's own, the need to rely on just one income).

"Als mijn man in de gevangenis komt te zitten, worden mijn kinderen ook met de vinger gewezen. En dat wil je niet." (Female victim of partner violence (respondent 16), participant)

"Het is een faire uitspraak he. Anders, gevangenisstraf, werkstraf, geen tijd meer om werk te zoeken, heel het gezin komt in het gedrang." (Male offender, fraud (respondent 33), participant)

Victims also considered whether the sanction pronounced would be likely to stop the offender from committing crimes. This finding fits the results of the first wave interviews, *i.e.* that to victims, prevention of further crime is a main sentencing goal.

"V: Wat denk je daarvan?
R: Goh, wat moet ik daarvan, allez… Wat gaat dat veranderen? Gaat dat iets veranderen?" (Male victim of theft (respondent 37), non-participant)

"Ze krijgen straf, er is een grote procedure, maar uiteindelijk wordt het toch niet uitgevoerd en ze herbeginnen." (Female victim of burglary and theft (respondent 52), non-participant)

One victim said that part of the reason why he could accept the judge's decision was that it would *not* affect the offender's criminal record ("Moi j'avait peur pour lui... Je le défends. J'avais peur pour son

cassier judiciaire"). Another determinant important to victims, still relating to the consequences of the outcome, is whether the judgement provides for a means of exerting pressure in case the offender does not respect it: conditional sanctions that may be executed in case the offender relapses were well-liked among the victims participating in the current study, as mentioned above. Four victims said that they felt a bit stronger and more at ease knowing that the offender should watch his/her steps. Still there were three victims who would have been more satisfied had the conditional sanctions that had been pronounced been effective sanctions. The reason is that they feared that the offender would repeat the offence, as he had not truly been punished.

"Je trouve que le juge a été... c'est pire hé, pour lui, cinq ans avec suspension, il a cinq ans pour pas faire des bêtises. Donc ça lui laisse un épais Damoclès. (…) Il sait que s'il ne le respecte pas, il y aurait un problème." (Male victim of intentional assault and battery (respondent 3), participant)

"Als er zo'n inbraak geweest is voel je je onveilig, en als de daders niet echt efficiënt gestraft worden, kan het weer opnieuw gebeuren. Omdat in feite, de potentiële daders worden nauwelijks afgeschrikt. Dat is mijn voornaamste zorg." (Male victim of burglary and theft (respondent 51), non-participant)

Going to a third determinant, some but not all victims of **recidivist offenders** carefully scrutinised whether the judge had taken into account the offender's past, arguing that it would not be fair if he would not be sanctioned more severely than first-time offenders. Two recidivist offenders said that they had been very lucky with the sanction they had received because, on the basis of their past, it would have been only right had the judge decided on a more severe sanction.

"Zes maand, ik vind dat nogal redelijk weinig. Omdat ze toch al, nog vastgezeten hebben en ze steken nog zoiets uit… Dan vind ik dat toch weinig wat ze gehad hebben." (Male victim of violent theft (respondent 13), participant)

"Met mijn verleden, dat ze eigenlijk toch, ik heb eigenlijk toch maar zes maand effectief gehad, omgezet in voorwaardelijk. (…) In zekere zin, na zoveel keren dezelfde feiten te plegen, is dat toch wel…" (Male offender, partner violence (respondent 17), participant)

Two victims considered the judgement unfair on the ground that **the amends the offender had been ordered to make to the state exceeded the amends (s)he had to make to the victim**. Both victims had been awarded a sum of money that was disproportionately small to the damage caused whereas their offenders had been sanctioned to a large fine or a prison sentence. They could not understand that the state does not realise that victims are better served with a compensation that covers their costs than with the offender serving a prison sentence or paying a fine to the state.

"Wij zitten al jaren met de last he, al jaren met de last, dan krijg je hier een uitspraak, als je dat allemaal optelt, he, dan krijg je 290 euro. (…) Dan dat gerecht zelf heeft daar gewoonweg geen last van gehad, niks, en die vragen dan een boete van 1200 euro voor hen. Waarom? Waarom moeten die 1200 euro hebben?" (Male victim of intentional assault and battery, threats and vandalism (respondent 45), non-participant)

Two respondents had trouble accepting the outcome of the trial because **other people present in court** (*i.e.* lawyers and journalists) had been able to grasp what had truly happened whereas the judge had not. They reasoned that everything must have been clear, as all present in court understood what had happened, and could therefore not comprehend that the judge had not been convinced.

"Die reporter die daar toen was, die van niks weet en de eerste keer gewoon de zitting ziet, slaagt er wel in om de juiste titel erboven te plakken. Want die weet verder van niks he, die hoort gewoon een zitting. Het feit dat hij die titel naar voor brengt als buitenstaander, dan moet het toch wel ergens duidelijk zijn." (Father of male victims of intentional assault and battery (respondent 6), non-participant)

Acceptance of the outcome was furthermore influenced by **what respondents' relatives or lawyers thought about it**. Victims' opinion on the length of a prison sentence and whether it is sufficient or not may also be influenced by **personal experiences**, as became clear from the interview with a victim who had seen the inside of a prison. It shows that it is easier for people to assess the outcome in case they have a reference point. If not, they turn to a lawyer or other people to help them.

"Dus 50 uur werkstraf, da's eigenlijk, naar het schijnt is dat echt niet zoveel voor de feiten die er zijn gepleegd. Allez, zei de advocaat toch." (Male offender, violent robbery (respondent 48), participant)

"Is dat lang, is dat kort, mij lijkt dat een eeuwigheid, ik ben daar *(in de gevangenis)* binnengeweest en ik denk dan van miljaar, als ik daar moest zoveel jaar zitten...." (Mother of female victim of sexual abuse (respondent 50), participant)

From offender interviews I deducted that sometimes offenders **are able to reconcile themselves with a judicial decision imposing a sanction about which they were convinced beforehand that they would consider it unfair**. This is an interesting finding in light of the alleged non-negotiable nature of moral mandates. For instance, one of the offenders during the first wave interview had said that he would consider it very unfair if the court would impose a prison sentence. During the second wave interview (he had been sanctioned to a short-term community service and considered this a fair sanction), he said that it would have been easier for him to accept a short-term prison sentence than a long-term community service. Likewise, one participant during the first wave interview told me that she considered paying fines to the state extremely unfair, but could afterwards easily reconcile herself with the fine that she had been ordered to pay because it was a small amount.

A third offender had always said that being sent to prison would be excessive but during the second interview argued that he would rather have gone to prison for some months than to pay the compensation that he had been ordered to pay. In conclusion, then, it seems that what makes offenders accept a judicial decision imposing a criminal sanction is not merely whether or not the sanction imposed matches their sentencing preference. The 'how much' (compensation and fine) and 'how long' (prison sentence and community service) seem equally important.

"V: Want je had toen gezegd dat je het onrechtvaardig zou vinden als je naast de schadevergoeding ook een boete zou moeten betalen.
R: Ja maar ja, dan tachtig euro…" (Female offender, burglary and theft (respondent 4), non-participant)

Offenders who had **put a lot of time and effort in the case**, e.g. by gathering evidence themselves, had much difficulty accepting an unfavourable outcome and heavily regretted the investment.

"Eerlijk gezegd, als ik nu zie hoe Y. *(mededader)* daar met zijn klak naar gesmeten heeft en hoe ik daar drie jaar moeite voor gedaan heb van altijd maar bellen – weet jij hoeveel mij dat gekost heeft aan advocatenkosten, die zaak? (…) Y. die veegt daar een beetje zijn dingen aan, awel, wat ik hier nu krijg, is dat Y. denk ik zelfs geen werkstraf gekregen heeft. (…) Waarom heb ik al die moeite gedaan? Ik had beter gewoon op het einde, en zeggen van ok ja wat is het hier? En ik denk eerlijk gezegd dat ik niet meer of minder – ik denk eerlijk gezegd dat mij dat een pak minder had gekost." (Male offender, intentional assault and battery (respondent 8), non-participant)

In a similar vein, the participants attached importance to **whether the judge had taken into account the fact that one had participated in mediation** when deciding on the outcome. From five offender interviews and two victim interviews I deduct that there is a clear expectation that people's efforts to participate in mediation are taken into account by the judge. Yet there may be a difference between victims and offenders. The sample was too small to draw definite conclusions, but I would cautiously hypothesise that what is important to victims is that the judge respects the agreement that the parties have reached, whereas offenders wish especially for the judge to take into account the fact that they have taken the effort to participate in mediation. This corroborates with the finding that the hope for a more lenient sanction to quite some offenders is a motivation to participate in mediation (this will become clear in the next chapter).

"V: Dans l'accord vous avez dit, 'je ne veux qu'il soit puni que de la plus légère des peines'. Êtes-vous satisfait avec le jugement?
R: Oui, parce qu'il respecte l'accord." (Male victim of intentional assault and battery (respondent 3), participant)

"Ik heb mijn best gedaan he, ik heb mijn best gedaan in strafbemiddeling, ik heb mijn best gedaan in herstelbemiddeling (…) en dat heeft gewoon allemaal geen rol gespeeld." (Female offender, intentional and unintentional assault and battery (respondent 46), participant)

To some victims it is not sufficient that the judge merely ratifies the mediation agreement. The victims were asked near the end of the second wave interviews whether they would consider a system that allows people to settle cases out of court feasible. There was only one victim who said that that would be a fine system; the others believed that even if mediation has been successful, cases should still be tried by a judge, because the hurt done to society too should be clearly condemned.

A further consideration that played a role when the participants assessed the outcome of the trial was **whether the sanction imposed matched their own sentencing preference**. Three victims when discussing the outcome referred to what they believed the outcome should have been, though one added that judges are more experienced and in the end therefore he could acquiesce to the decision, and one was speaking in a purely hypothetical sense ('Had the judge decided to…').

Among the sub-questions to the third research question guiding the current study are those asking to which extent parties faced with the outcome of a criminal trial **compare this outcome to outcomes of similar or other cases**. The main finding is that the respondents did not actively search for information about the sanctions that are usually pronounced in similar or other cases. When one comes across this information, for example in a newspaper, through gossip in one's neighbourhood, in the centre where one takes therapy, in prison, on the day of the trial while awaiting one's own case or through the media, comparisons are made indeed, and one offender compared the outcome to the outcome of a previous experience. But only one respondent, an offender, said that he had actively searched for information on what is usually pronounced in cases such as his on the internet.

"Maar ja, ik was toen geweest naar de rechtbank, met u toen, en toen waren ze redelijk mild voor iedereen, sommigen hadden elkaar het ziekenhuis in geslagen en die moesten gewoon ergens een therapieke gaan doen en hier is het dan zes maand voor het stelen van wat geld en cd's." (Male victim of theft (respondent 29), non-participant)

"Ik vind, hetgeen ik hier nu aan de hand heb is eigenlijk maar een kleine zaak. Als je zo de kranten van de laatste weken en maanden gevolgd hebt… allez, dan loopt er eigenlijk wel ander volk rond he." (Male offender, theft (respondent 14), participant)

Other factors that play a role when *victims* decide whether the sanction is acceptable are the following. Several victims of non-strangers indicated that they would probably have had a different opinion on

the fairness of the sanction if the same sanction would have been pronounced on a stranger, thus designating the importance of **the relationship between victim and offender** in the acceptance of the sanction by victims. A victim had great trouble accepting the judgement because in his view **evidence had been ignored**. Then there was a victim who said he acquiesced to the judgement even though the compensation that was awarded to him was disproportionately low simply because he felt that he should be **happy to get part of the money back rather than nothing at all**. Two victims said that one becomes milder with a view to sentencing as more **time** passes **between the crime and the trial**, and that this also helps to accept the outcome. I should mention that three victims indicated that they did not understand the judgement. Many questions (e.g. would the prison sentence be executed, was the offender still allowed to go abroad, would the offender receive therapy?) remained unanswered to these victims.

"Da's een momentopname he. Want nu kom jij juist na de uitspraak, ik denk als jij twee maanden later komt dat dat misschien, dan ben je nog gekalmeerder, dan ben je misschien nog wat milder. (…) Tijd heelt wonden he." (Female victim of intentional assault and battery, threats and vandalism (respondent 44), non-participant)

"Het wordt een beetje vijgen na Pasen na een tijdje." (Male victim of burglary and theft (respondent 51), non-participant)

A number of additional factors taken into account by *offenders* are the following. One said that the sanction imposing upon him the duty to pay compensation to the victims was hard to accept because in fact **the victims still owed *him* money**. In a similar vein, an offender considered the outcome unfair because **the victim had been partly responsible** for what had happened (they had been involved in a fight) and the judge had acknowledged this but he still had been ordered to pay the full amount of compensation that the victim had claimed. Another offender considered the amount of compensation that she had been ordered to pay unfair because four and a half years of **interests** would be added to the amount, whereas it was not her fault that the case had only been referred to court four and a half years after the offence. The same person could not accept the outcome of the trial because she was **held responsible for something that had happened accidentally**. Finally, one offender considered the outcome unfair because **evidence had been ignored**.

"Ik heb nooit gevraagd om met die rechtszaak vier en een half jaar te wachten maar ik moet dat dus wel betalen. En dat gaat wel naar haar. En ik heb dat gevraagd dus ook aan mijn advocaat van, dat is toch niet rechtvaardig." (Female offender, intentional and unintentional assault and battery (respondent 46), participant)

§3.2. Considerations related to appeal

The question that is tackled in this part is: how far are people willing to go to see their sentencing preference fulfilled? In determining whether the sentencing preferences of the current study's participants amount to moral mandates, it is important to find out whether these preferences are non-negotiable, as moral mandates are said to be (Skitka and Mullen, 2002a, 2002b), and if they determine decisions independently of other elements, as Skitka *et al.* (2005) assert moral mandates do. In Belgium, litigants can appeal judicial decisions before a higher court of law.[50] Do they take this step or are there other factors than merely the wish to see one's sentencing preference fulfilled that influence the decision (not) to appeal the judgement?

I start with the observation that none of the respondents planned on appealing the judgement. Six victims and one offender had considered doing so, but none of them eventually had decided to go through with it. From the interviews I could deduct several reasons for deciding not to bring the case to an appellate court. Note that people may have more than one reason not to file an appeal.

A first reason for the victims not to appeal the judicial decision was that they had experienced that **a trial takes a lot of time and energy**. Time investment is one thing, but a trial also requires a high emotional investment that they were not willing to suffer anymore. Four victims indicated that their emotional well-being took precedence over the possibility of obtaining a higher amount of compensation or of seeing their sentencing preference fulfilled. A second reason for reconciling oneself to the judicial decision, mentioned by three respondents, was that taking further steps would be very **expensive**. Lawyers' fees might exceed the extra gain.

"Het wordt onbetaalbaar en ook te emotioneel. Ik wil echt niet meer. Ik voel dat ik, pfff, op aan het geraken ben." (Female victim of intentional assault and battery, threats and vandalism (respondent 44), non-participant)

"Eerlijk gezegd, als ik vandaag de Lotto zou winnen, ik ga morgen direct in beroep. Gewoon voor mijn principe gelijk te halen (…)." (Male offender, intentional assault and battery (respondent 8), non-participant)

"Je kunt er moeilijk een zaak tegen spannen voor dat geld, als je een advocaat moet gaan inhuren, dat is het ook niet waard. (…) Dan ben je meer kwijt dan je nog kunt winnen." (Male victim of theft (respondent 29), non-participant)

[50] They can do so within fifteen days after having been notified about the judgement (Verstraeten, 2007). Civil parties can only appeal judicial decisions to have the compensation order revisited; for the decision on guilt or the sentence to be reviewed, the public prosecutor or offender too should file an appeal (Declercq, 2007).

Note that, as the second quote above suggests, two victims and one offender considered appealing the judgement not because they considered the sanction too mild/too harsh; they said that they would appeal the judge's decision **for a symbolic reason**, that is, as a form of **recognition**.

One offender said that she had decided to accept any sanction that would be imposed because if she would not learn to accept what she called the injustice caused by the criminal justice system, **she would probably take recourse again to alcohol**, which had caused her to commit prior offences.

"(...) heb ik onrecht leren aanvaarden in plaats van ertegen te vechten. (…) Het probleem is, als je dat gaat doen, en zeker als je een verslavingsproblematiek hebt, dan ga je altijd terug naar die roesmiddelen zoeken om te vergeten." (Female offender, burglary and theft (respondent 4), non-participant)

Next are a number of reasons that were each mentioned by one victim. One victim would not appeal the judicial decision for the reason that chances were high that if she would, her young children **would need to be interrogated**. Up till now she had been able to spare them the worry and bother. One victim reasoned that unlike him **judges have a great deal of experience with trying cases** and therefore decided not to go against that decision. One victim did not appeal the decision because his lawyer had told him not to, one reasoned that he could not provide **any more proof of the facts**, and finally the father of two young victims said that he had decided not to appeal the judgement after finding out that **neither the children's lawyer nor the public prosecutor would file an appeal**. From this fact he inferred that there was little chance that the appeal would be successful.

"V: En wat vind je ervan, van die uitspraak?
R: Ja, ik vind dat goed. De advocaat zegt toch dat ik niet in beroep moet gaan." (Male victim of violent theft (respondent 13), participant)

SECTION II. DISCUSSION OF RESULTS

Introduction

In this section, the results reported above are discussed. The structure is similar to the structure of the previous section: victims' sentencing preferences are discussed first (§1), then offenders' sentencing preferences (§2), and finally the results on acceptance of the judgement (§3).

§1. Victims' sentencing preferences

§1.1. Victims' need for society to express censure towards the actions of the offender

Roberts *et al.* (2003: viii) once wrote that "whenever most people think of crime, they also think of punishment". This stance is partly confirmed by the results of the current study. It is indeed true that victims feel that it is only right that those who have committed a crime should be censured. This finding at first sight confirms the value protection model's stance that people believe that (only) those who are guilty of an offence should be punished, but there is an important caveat to be made. The victims participating in the current study felt a strong need for a formal reaction to the crime by an official body and thus for censure, but to many, this reaction needs not involve the imposition of a sanction. Therefore, I would say that some victims indeed hold a moral mandate about punishment as it was defined by the value protection model, but that many victims hold a moral mandate that does not so much instruct them that those guilty of an offence should be punished but that they should be censured.

This study, then, adds to the literature on moral mandates in that it shows that the belief that people guilty of committing a crime should be censured and in some cases sanctioned is also held by those who have fallen victim to a crime themselves – recall that studies on moral mandates so far had not yet considered the point of view of those directly involved in criminal cases.

§1.2. The most appropriate means for expressing censure

§1.2.1. Do sentencing preferences amount to a moral mandate?

The current study mapped victims' opinions on the most appropriate means for expressing censure towards the offender. The question to be tackled now is whether their sentencing preferences are moral mandates. Looking at the definition of a moral mandate, which suggests that these are fixed, firm, and non-negotiable, I would say that these sentencing preferences are not sufficiently strong and fixed so as to be labelled 'moral mandates'. I see two reasons for this.

First, victims respect the principle that judges take decisions on punishment and believe that if the judge pronounces a particular sanction that probably is the correct one, as the judge has much more experience and knows what is usually done in particular cases. Second, the sentencing preferences that were expressed were fluid in nature. Those victimised by non-strangers indicated that their view on sentencing would have been different if they had been victimised by a stranger, and some said that they would have had a different opinion on sentencing if the sanction would have been pronounced immediately after the offence. These findings suggest that sentencing preferences are fluid, which is a further indication that they do not amount to moral mandates, as Skitka *et al.* (2005: 896) write that "attitudes rooted in moral conviction (…) transcend the boundaries of persons and cultures. They are perceived as terminal absolutes (…) and are felt to apply across persons and contexts". People do agree that all those who committed an offence should be censured, no matter the specific offender or the time, but their views on sanctioning do vary.

Obviously, these results are to be corroborated by future research. There may be a reason for the fact that I have not found a strong moral conviction on sentencing among the victims participating in this study. One such reason may be that all these victims were open to participation in victim-offender mediation. On the basis of Skitka *et al.* (2005), one could reason that victims who agree to participate in mediation have less strong moral convictions than victims who are offered to participate in mediation but decline the offer, because Skitka *et al.* write that people with stronger moral convictions are more inclined to keep a social and physical distance from those with different attitudes than people with less strong moral convictions. The first also display lower levels of good will and cooperativeness and a greater inability to generate solutions to resolve disagreements. On the other hand, one could say that those people who agree to participate in victim-offender mediation in fact have a *stronger* moral mandate than those who do not. These people especially may have a strong moral conviction about how a society should respond to crime, as they are prepared to spend time and energy on contributing to see their preferred outcome realised, whereas those who do not participate in mediation leave it up to the criminal justice system's professionals entirely.

This confusion leads me to reflect about the definition of moral mandates. I find that a great impediment to reflecting about moral mandates is the fact that moral mandates have been defined by just a few authors in a very specific way. The definitions are few, and they are limited and abstract (e.g. "selective expressions of values that are central to people's sense of personal identity" (Skitka, 2002: 588)). Though Skitka *et al.* (2005) have presented a number of more concrete characteristics of moral beliefs, such as their universal and therefore non-fluid nature, the intensity of the emotions that are aroused by threats to moral beliefs, the fact that they are seen as facts about the world ("much like scientific judgements") and their capacity to function as independent motivational

forces, it is still hard to apply the concept 'moral mandate'. As regards the concept punishment, for example, in the terminology that is used in this chapter, the concept 'moral mandate' has only been substantiated and defined on the level of censure, whereas the value protection model authors indicate that people have a strong belief that those guilty of an offence should be *punished*. But 'punishment' is a concept consisting of censure *and* sanction, and this is a cause for confusion. The example given above about how it is unclear whether those people who participate in mediation can be said to have a stronger or less strong moral conviction on punishment than others too shows that applying the concept is not straightforward.

In conclusion, I would say that the concept 'moral mandate' is not sufficiently cleared out yet, which is not surprising as it is a relatively new concept, but which does hamper reflection. For the sake of the current study, I chose to use the characteristics of moral convictions as spelled out by Skitka *et al.* (2005) in order to test whether the sentencing preferences that were expressed by the participants to the current study are moral mandates. This method led me to conclude that the sentencing preferences expressed by the victims in my opinion are not moral mandates.

§1.2.2. The need for a sanction

Some of the victims who proposed that a therapy or compensation should be imposed on the offender said that that would suffice. They did not request an additional sanction to be imposed. In this the results of the current study differ from those of Gromet and Darley (2006), which showed that people prefer punishments that include both restorative and retributive components to those that are purely restorative. The difference may be due to the difference in participants between the two studies (victims and offenders versus observers/citizens), but on those occasions where the current study's results on victims' sentencing preferences have been presented to peers, one consistent comment indeed was that the victims who participated in this study are remarkably mild.

It is true of course that the victims participating in this study all were interested in participating in mediation. It sounds reasonable that a selection bias may account for the fact that they have very rehabilitation-oriented sentencing preferences, as a retributive state of mind seems incompatible with deciding to participate in mediation (Wyrick and Costanzo, 1999; Lambert *et al.*, 2010). As Coates *et al.* (2003a) remarked with respect to the difference between victims who do and those who do not wish to participate in mediation, "[t]here likely are differing philosophies between persons in these two groups regarding the nature of justice and the role of the criminal justice system" (p. 12). Yet empirical material on the attitude on sentencing of victims participating in mediation as compared to

others is lacking[51], and the majority of reasons victims give for *not* participating in mediation does not relate to a particularly severe view on sentencing but to other issues[52].

Also, perhaps we should first ask whether it is indeed true that the victims who participated in the current study are so much more lenient than others. Studies among the public at large present an image of a punitive public that believes the courts are too lenient, but studies among victims show something different. Like I did, Lemonne and Vanfraechem (2010) found that victims do not necessarily report crimes to the police in order to make sure that the offender is prosecuted – often another reason motivates them to report the crime (e.g. with a view to insurance or as an automatic reaction) – and that victims attach great importance to offenders being censured but are not necessarily in favour of sanctioning them. Furthermore, compensation was found to be regarded as an adequate reaction to crime by many of Lemonne and Vanfraechem's participants too. Interestingly, among those participants there were many who had experienced more serious crimes than the victims who participated in the current study. On the other hand, a study by Aertsen (1993) among fifty victims of crime who suffered from serious psychological distress as a result of victimisation showed that 57% of them did express a wish for harsh punishment; 24% expressed a wish for a moderate punishment. The other 19% said that they had no wish for punishment.

Herman (2005) from in-depth interviews with victims of various crimes concluded that victims in general are not interested in seeing their perpetrator suffer. When they suggest imprisonment for example, Herman writes, they do so not out of retribution but for the sake of their own and societal security. The victims who took part in the current study thus resemble those of Herman. Lemonne and Vanfraechem (2010) and Orth (2003) too found 'security' both on a micro (individual) and a macro (societal) level to be an important sentencing goal for crime victims.

I may furthermore refer to the literature on the punitiveness gap, that is, the alleged gap between judges and the public concerning the (preferred) severity of punishment. Researchers inquiring into this punitiveness gap have found that public opinion on sentencing differs along two dimensions, *i.e.* (1) the amount of information available and (2) the degree of involvement in the process of deciding on the sentence (Elffers and de Keijser, 2009). Lays that are badly informed about a case they need

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[51] There are studies that predict which victims are more likely to participate in mediation than others and under which circumstances victims are more inclined to take part in mediation – for an overview, see Umbreit *et al.* (1994) and Wyrick and Costanzo (1999) –, but these tend to focus on victims' demographic characteristics and the nature of the offence. Victim's attitude on sentencing is a variable that I have not found evidence on in this context.

[52] The most important reasons for victims not to participate in mediation (as reported by Coates *et al.*, 2003a and Umbreit *et al.*, 2004) seem to be: that the crime is too trivial to be worth the time, fear of meeting the offender, pressure from family or friends not to participate, that the matter has already been settled, a need to forget about the offence, the feeling that too much time has passed since the offence, and fear that the offender will not be adequately punished if one participates in mediation.

to judge display very different attitudes from those that are well-informed and closely involved in the case (Elffers and de Keijser, 2009). The punitiveness gap becomes considerably smaller as people are supplied with more detailed information about a case (de Keijser *et al.*, 2006, see also de Keijser *et al.*, 2007), which is indeed the case for those directly involved in a criminal case as a victim. As Hough and Roberts (2004: 45) state, the general public lacks information that allows it to "[put] a human face on the problem", but the situation is quite different for actual victims of crime.

A final consideration about victims and their sentencing preferences is that procedural justice literature gives the impression that it assumes that victims are vengeful. For example, when it asserts that fair procedures may cushion the blow of unfavourable outcomes, the reader automatically assumes that what is meant is that fair procedures will protect victims against the negative feelings aroused by overly lenient sanctions. Yet victims were more likely to tell me that they would have a hard time accepting a sanction that is *too harsh* on the offender. It is not clear whether the cushion of support hypothesis also applies to such people.

§1.2.3. The goal of expressing censure/imposing sanctions

In order to interpret the findings on the goal that victims believe societal censure of crime should serve, I refer to Vidmar and Miller's (1980) typology of punishment motives. The authors discern between two punishment motives, *i.e.* behaviour control and retribution. The first they call an instrumental or utilitarian motive, the second a moral or retributive motive. The first motive is oriented towards "the elimination of ongoing or anticipated behaviour" (p. 570); the second is oriented towards "the reassertion of the reactor's values and beliefs" (p. 570). The authors furthermore discern between two targets of punishment: the offender or a broader social audience. Crossing these two dimensions, they arrive at a classification built of four cells containing specific punishment goals (see Table VII-I on the next page).

The goal that censure should serve according to the victims participating in this study is first and foremost an *instrumental* goal. Punishment to these victims has an educative goal, which reminds of Hampton's (1984) moral education theory of punishment and is fundamentally different from any retributive or just desert philosophy. The goal is similar to the one proposed by traditional theories of punishment – the aim always is to prevent future crime and thus secure societal safety – but the means are unmistakably different. It is not to impose punishments that deter but to impose measures that educate offenders, as Hampton writes, in order for them to learn that their actions are morally wrong and should therefore not be repeated. The aim of an educative goal of punishment in the end according to Hampton is that the measure imposed will "benefit the person who will experience it" (p. 214), which corresponds to the point of view of the victims participating in the current study.

Table VII-I: Vidmar and Miller's typology of punishment motives
(Source: Vidmar and Miller, 1980: 571)

		Target	
Basic motives		Offender	Others in the social environment
	Behaviour control *Instrumental*	Deterrence; isolation; elimination; re-education of offender; restitution to victim	General deterrence or threat; prevention of vengeance by victim or others; upholding morale of conformers; disavowal of act
	Retribution *Moral*	Change in offender's belief system vis-à-vis victim or societal rule; reaffirmation of private self-image of victim or surrogates; status degradation and differentiation of offender; assertion of power over offender	Vindicating rule: re-establishing social consensus about rule; diffuse release of psychological tension through social comparison processes

Vidmar and Miller (1980) also discern *moral* punishment goals, one of which is victim acknowledgement and validation. In the debate about the desirability of a restorative justice system, that is, a justice system not imposing punishment but restorative sanctions, it has been suggested that victims value punishment because the punishment of the offender conveys a message of victim acknowledgement and recognition (Duff, 2002; Golash, 2005), and that for this reason punishment is a necessary element of any justice system. Some of the victims participating in this study indeed made a link between censure of the offender and victim recognition. One person for example testified how the fact that the offender was acquitted conveyed upon his children, the victims, the message that they are not worthy of protection. Yet in all, few victims explicitly said that recognition of victim status proceeded from the punishment of the offender. Recall that victim recognition was discussed extensively in chapter five and six when describing and discussing the results with respect to standing. It seems that at least to the victims who participated in the current study, acknowledgement and recognition were more likely to proceed from being treated with respect and being believed by authorities than from the punishment of the offender. On the other hand, there was only one victim who had been confronted with an acquittal of the offender (the one I just referred to), and this person indeed expressed a strong lack of victim acknowledgement. In that sense, one could suppose that there may be link between punishment and victim recognition, but that it just did not come to the fore in this study because few victims were confronted with an acquittal of the offender.

At this point it is useful to shortly reflect on whether the sentence that the offenders participating in the current study had received was such that it fulfilled the purpose of re-education and as such would withhold them committing further crime. They were not explicitly asked this question, but given the fact that victims attach major importance to this goal, it is worth having a look at offenders' stories from this perspective. It would seem, on the basis of the results of the current study, that no major re-education effects result from the sentence itself. This I conclude from three observations.

First, it seems that the re-education effect results especially from the confrontation with the court, not so much from the sentence. The respondents were asked their opinion on a system in which the parties to a crime would solve the crime among themselves, with the help of a mediator. A number of offenders were positive about the idea, but others said that it is a good thing to be confronted with a court, because it is intimidating and impressive and has a lasting impression. They did discern between minor offences and serious offences, saying that in the latter case especially a judicial intervention is necessary in order to raise offenders' awareness.

Second, respondents were asked near the end of the second wave interviews if there was anything that they would have done differently, with hindsight. This question was meant to assess the degree to which respondents would have done something different during the criminal proceedings (e.g. take a lawyer instead of defending oneself), but many offenders replied that they would have tried to prevent the offence from happening. Interestingly, none of them mentioned the sentence they received as a determining factor. It was insight into what they had done and caused that played a role and the fact that being prosecuted causes a lot of trouble, concern and fuss, which they did not want to go through again.

Third, as for deterrence, one respondent said that the sentence he received would not withhold him from doing exactly the same thing as he was convicted for; he said he refused his stepson to take control over him and that if ever his stepson would again show unacceptable behaviour, he would again grab him and take him to his room with force if necessary. Another respondent explicitly said during the interview that the sentence that had been pronounced was not such that it would prevent him from committing similar acts in the future: paying fines, he said, only causes frustration; they do not deter. To the contrary, he was so furious about the sentence that he had received, which according to him was overly harsh, that he said that next time, he would not limit himself to giving the victim a slap in the face but break the victim's legs ("ja, dan denk ik in mezelf, had ik dat geweten dan had ik beter zijn been gebroken") – the sentence would not be any harsher, he reasoned.

This brings me to an important observation with a view to deterrence and re-education of offenders: it seems to me that the will to behave in accordance with the law in the future is stronger when one has received a fair sentence (that is, a proportional one) than when one has received a

harsh sentence. This means that the view that the more severe the sentence, the more likely that the offender will be deterred from committing future crime, does not make sense, as harsh sentences often will be perceived to be unfair because they are perceived to be disproportional. This observation squares with previous observations that punishment is not the deterrent that popular discourse supposes it is (e.g. Doob and Webster, 2003; Robinson and Darley, 2004; Wright *et al.*, 2004). It seems in fact that when people receive a sentence that they understand and that gives them the feeling that they get a second chance and that their story has been listened to, their propensity towards committing further crime is more likely to be reduced than if they receive a harsh sentence.

§1.2.4. The difference between fair sanctions and appropriate sanctions: what is justice?

It has been interesting to find that some of the victims who talked about the way in which society should express censure explicitly said that feeling recognised as a victim does not so much result from the type of sanction or the rigorousness of the sanction that would be imposed on the offender, but from the fact that their complaints are taken seriously and that society formally reacts to the crime through a judge. A fair sentence, one respondent said, is one that expresses this formal condemnation of the act. In that respect it is interesting to note that a number of the victims interviewed by Van Camp (2011) too said that the sense that justice has been done results from the offender being held accountable in a formal way, and that "the degree of justice does not equal the degree of punishment" (p. 159). In fact, Van Camp concludes from her interviews that "[j]ustice is for the offender to be held accountable and the victim to be recognized" (p. 159). The results of the current study are in line with this and as such the two studies together make a significant contribution to knowledge on what victims of crime truly need in order to feel recognised and feel that justice has been done – it is not harsh punishment, but that their case is taken seriously and that the offender is held accountable and reprimanded by a formal body, in addition to being treated with respect by the authorities. As Van Camp (2011) writes, this points to the victims holding a relational instead of instrumental justice motive and thus corresponds with the group-value model's assertion that feelings of fairness result from feeling recognised by the authorities of one's group.

§1.2.5. The need for decision control on the sanction

The victims participating in the current study did not feel a high need to be able to (co-)decide on the sanction to be imposed on the offender. As this is a finding in line with those by Wemmers and Cyr (2004) and Van Camp (2011), it is safe to say that this is by now a robust finding.

§1.2.6. Imprisonment

Though it was seldom suggested as the most appropriate or fair sanction for their offender, the one sanction that was discussed by the vast majority of victims (and offenders, for that matter) when discussing their views on sentencing was imprisonment. Contrary to sanctions such as fines or community services, which were mentioned each by only some participants, imprisonment was discussed in many interviews. The pre-eminence of imprisonment in the respondents' minds is likely due to the long tradition of imprisonment and the high visibility of this sanction, but Roberts' (2002: 35) stance that in the mind of the public at large "nothing punishes like prison" and Roach's (2000) argument that the public associates imprisonment with taking crime seriously do not seem applicable to the crime victims who participated in the current study. It is true, as I have written earlier (De Mesmaecker, 2010a), that public opinion research offers images of a strongly punitive public whose default sentencing motive is just deserts (see e.g. Darley *et al.*, 2000). But the victims who participated in the current study were not at all convinced that imprisonment is the sanction which is most appropriate for their offenders or for offenders in general, mainly because they feel that it does not 'work' or even causes more crime. The current study furthermore shows that support for imprisonment is less strong among people who are aware of alternatives, which confirms the studies reviewed in Lee (1996) and Roberts and Stalans (2004) and offers hope for advocates of alternative sanctions who try to increase support for these alternative measures (see De Mesmaecker, 2010a).

Note that many of the victims expressing disapproval of imprisonment felt a great need to explain this choice. They felt like they somehow had to justify their point of view on imprisonment, which suggests that victims feel societal pressure for being punitive.

§1.2.7. Inequity distress

The findings of the current study at some points remind of equity theory. Elaborating on the topic of compensation, one victim had not even considered that she could ask for compensation from the offender until the mediator had made her aware of the possibility, and another victim was herself hesitant to ask for compensation but felt pressure from her lawyer to do so. Also, none of the victims tried to 'make money' out of the offence. All this may be explained by equity theory, which prescribes that people who are over-rewarded by a distribution experience distress. One of the victims indeed said that she would not be able to live with that. Furthermore, take the example of the victims who said that they would feel very bad if the judge would pronounce a sanction that they consider too harsh, or that of the victims who said that they would feel guilty in such a case. This finding confirms equity theory's most contra-intuitive stance, *i.e.* that those who are over-rewarded by a distribution may feel distressed, just as those who are under-rewarded. It furthermore shows

that contrary to conventional wisdom, victims are not by definition keen on harsh sentencing. To the contrary, sanctions that are too harsh may leave them feeling guilty.

§2. Offenders' acknowledgement of guilt and sentencing preferences

§2.1. The acceptability of society expressing censure towards the actions of the offender

In line with moral mandate literature, offenders in general agree that society has the right to punish them for their acts. They accept that when they break societal rules, they will be reprimanded. As such, the study confirms the existence of a moral mandate instructing that those who are guilty of crime should be punished among those who have committed crime, whereas research on moral mandates so far has concentrated not on victims of crime or offenders but on observers. Obviously, the results are based on interviews with offenders who were willing to participate in mediation and thus did not deny their involvement in the offence; this should be kept in mind.

§2.2. The most appropriate means for expressing censure

§2.2.1. Offenders' perceptions of different sanctions

Offenders were asked to reflect on which sanction exactly they believed would be the most appropriate for them. Whereas victims' answers centred on compensation and therapy, offenders suggested a whole range of sanctions. There was not one 'most popular' sanction, though offenders strongly disapproved of imprisonment, much for the same reasons as victims did. To offenders, proportionality to the crime and to the input of accomplices should be the principles leading decisions on punishment. Also, they plead for sanctions that do not create problems (financial or domestic) but allow offenders to, once they have served the sanction, live a normal life.

Among other authors that have looked into offenders' perceptions of different sanctions and alternative measures are Duchêne *et al.* (2009), Vlaemynck *et al.* (forthcoming) and Nabben *et al.* (2010), who looked into offenders' perceptions of community service, Petersilia (1990) and Moore *et al.* (2008), who studied offenders' perceptions of probation, alternative sanctions and prison, May and Wood (2005), who studied offenders' perceptions of various alternative sanctions (e.g. probation and boot camp), Mair and May (1997) and Allen and Treger (1990), who surveyed offenders supervised by probation services, Allen and Treger (1994), who examined offenders' views on fines and restitution orders, and Hucklesby (2009), who studied offenders' opinion on curfew orders. With the current study I hope to have contributed to knowledge on how offenders perceive different sanctions such as fines, prison sentences and community service and alternatives such as therapy, *and*

on how they perceive the sanction that they themselves received, as the current study did not ask the offenders for their general attitudes on crime and punishment but to consider their own situation.

§2.2.2. Do sentencing preferences amount to moral mandates?

The question if the sentencing preferences expressed by the offenders who participated in the current study amount to moral mandates is a difficult one because of the definitional confusion delineated above. Yet I tend to say that they are not, because of the finding that offenders are willing to accept sanctions that do not match their sentencing preference. This was surprising considering the earnestness with which they criticised the specific sanctions that they were now ready to accept during the pre-trial interviews. The decisive factor for accepting the sanction was not the type of punishment but the length (in case of prison sentences or community services) or the amount (in case of compensation orders or fines), because these are the aspects of the sanction that determine how far-reaching the consequences for one's future will be. The concrete consequence of the specific sanction that was imposed on them was more important to the offenders than the correspondence with their own sentencing preference. As Skitka *et al.* (2005: 908) write that moral convictions "are seen in rigid and absolutist terms" and moral beliefs are perceived as "imperatives, rather than preferences about which reasonable people can disagree" (Mullen and Skitka, 2006b: 3), it would seem that the sentencing preferences expressed by the offenders do not amount to moral mandates, though they do seem stronger than those expressed by the victims. The offenders expressed more specific sanctions. This may have to do with the fact that the sample contained quite some recidivist offenders, whereas most of the victims had no previous experience with criminal cases.

§2.2.3. The goal of expressing censure/sanctioning

The offenders considered the goal of punishment first of all to be compensation of the victims for the harm that was done. This is, in Vidmar and Miller's (1980) view, an instrumental punishment goal. But there is more. Indermaur's (1994) study on offenders' perceptions on sentencing showed rehabilitation to be the most important sentencing goal for offenders. The current study's sample contained only two offenders expressing a preference for therapy, but it is true as said that many offenders did consider the consequences of the sanction imposed and whether it would cause them extra problems or allow taking up their lives again after having served the sanction. In that sense, the main consideration of these offenders too was that after the sanction would be served, they would be able to live a law-abiding life free of crime. This is a goal comparable to rehabilitation.

§2.2.4. Inequity distress

In all, offenders were satisfied about the judge's verdict and the sanction that was imposed. Obviously there were a few exceptions, but most offenders had been pleasantly surprised by the mildness of the sanction that had been imposed. Many had expected much more severe sanctions. Notice that one person said that the sanction was actually not fair, as it was too mild for what he had done. Equity theory suggests that this person would experience inequity distress, but there were no apparent signs of such distress being experienced neither by this offender nor by any of the others that had received a mild punishment. Those who had received a punishment that they considered too severe had considerably more difficulty accepting the sanction. On the other hand, there is a finding clearly illustrating equity theory, which is that offenders have trouble accepting that the accomplice that has caused the most damage is not punished more severely than them. Indeed equity theory suggests that social interaction is governed by a rule that people want rewards to be dependent on inputs; this also seems to apply to negative rewards such as punishment.

§2.2.5. Reflections on the cushion of support

The results reported in this chapter give rise to three reflections on the notion 'cushion of support'. First, when discussing the degree to which offenders would accept a sanction that does not match the one they have in mind, I reported that offenders who considered themselves innocent said that they would not be able to accept any punishment, even if the procedure had been fair. This means that in those cases in which innocent people are sanctioned, the cushion of support thesis may not hold. A number of interview fragments of respondents saying that they would not accept an *incorrect* sanction lead me to hypothesise that procedural justice theory may be right in saying that fair procedures provide a cushion of support against *unfavourable* judicial decisions, but that they may not provide a cushion of support against *unfair* judicial decisions, that is, decisions that do not respect the thesis that the innocent should be acquitted and the guilty convicted. This is a finding similar to that of Kulik and Clark (1993); they too reported that fair procedures did not form a cushion of support against incorrect outcomes. This means that moral mandate writers seem to be right when they say that there are boundary conditions to the fair process effect, *i.e.* that fair procedures do not mitigate the distress caused by an unfavourable outcome in case the outcome violates one's identity (Mayer *et al.*, 2009; Bauman and Skitka, 2009). Bauman and Skitka (2009: 41) explain that "[a]lthough people may be willing to sacrifice their material or social self-interest if authorities act in ways that communicate status and belonging [as procedural justice theory suggests, VDM], they may not be willing to similarly sacrifice their moral beliefs".

Second, some offenders said that it is fine for them to be yelled at in court as long as they are acquitted or sanctioned to a mild sanction, in other words, that the distress caused by the bad treatment is mitigated by the favourability of the outcome. The notion 'cushion of support' traditionally points at the reverse, *i.e.* that the distress caused by an unfavourable outcome is mitigated by the fairness of the procedure. What the current study suggests, then, is that the reverse may also be true and that a favourable outcome may mitigate the distress caused by an impolite treatment. To the best of my knowledge, this effect has not been described in procedural justice literature. Obviously more research is needed, if only because another offender did say that even if he would be acquitted he would still think back to the awful way in which he had been treated.

Third, offenders have said that the outcomes resulting from unfair trials always will be unfair too. This would mean that in case outcomes are considered unfair, there would be no procedure on which to lean, which would render the concept of 'cushion of support' irrelevant: in case of an unfair outcome there would simply not *be* a fair procedure to provide for a cushion.

§2.2.6. Outcome presides over respectful treatment

Above offenders' answers to the statement whether they prefer that judges treat them politely or that they pronounce a mild sanction were reported. Offenders were likely to say that the sanction in the end is the ultimate determinant of satisfaction with the trial; victims more often said that both being treated well and the offender being censured/sanctioned are important, and that it is extremely difficult to choose between the two, though obviously in both groups there were exceptions and all offenders too attached great importance to respectful treatment.

The results lead to reflection on an important paper by Tyler *et al.* (1999). These authors studied people both in hypothetical conflict situations and in situations of real-life conflict and found that those in the hypothetical situations, when asked *before* becoming involved in a decision making procedure which aspects they believed would determine their evaluation of the procedure, thought that they would be much less concerned with how they were treated on a personal level than with the outcome. The study participants that answered questions on a *real-life* situation showed no significant difference between the two aspects. The current study confirms that real-life victims believe that both interpersonal treatment and outcome will influence their evaluation of a trial. Offenders' replies were somewhat different; the question arises, then, whether Tyler *et al.*'s conclusion on the use of the two aspects pre-experience, when transposed to a criminal law context, is applicable to victims only.

§2.2.7. The motivated reasoning hypothesis

The results allow reflecting on the value protection model's assertion that people, once they learn that the outcome of their case matches their moral mandate, do not pay any attention anymore to the procedure that led to the outcome. One person said that he *would* still think back to the procedure even if the outcome would be advantageous. One could say that what the value protection model states, in terms of procedural justice theory, is that an outcome that matches one's moral mandate provides a cushion of support against an unfair treatment. One does not think back to that treatment. Though indeed a number of offenders were quoted who said that they would be fine if the judge would treat them impolitely and rude as long as (s)he pronounces a mild sanction, and one did explicitly say that "as long as the punishment is mild no-one complains about bad treatment" (quote of respondent 39), the offender discussed here proves otherwise. The thesis, then, that people do not look back on procedures anymore from the moment they receive an outcome that matches their moral mandate may not apply to all offenders.

§3. Victims' and offenders' acceptance of the judicial decision

As indicated, the value protection model and fairness heuristic theory make clear predictions about the elements determining the acceptance of outcomes of decision making procedures. The results should now allow providing deeper insight into the validity of these models' predictions on the elements that determine the acceptance of outcomes of decision making procedures.

§3.1. Factors influencing the acceptance of the judgement

§3.1.1. The importance of procedural fairness

The value protection model hypothesises that in case people have a moral mandate on the outcome of a decision making procedure, the fairness of the outcome is determined by whether or not the outcome matches this moral mandate. The above analysis shows that the outcome preferences that the participants to the current study expressed in my view are neither sufficiently strong nor sufficiently non-negotiable and universal to label them 'moral mandates'.

Recall that the value protection model asserts that in case people do not have a moral mandate, the fairness of the outcome depends on the fairness of the trial. The application of fairness heuristic theory to a criminal trial too suggests that procedural fairness information should be the main determinant of perceptions of fairness. As described above, a number of respondents indeed said that they believe that any outcome of a fair trial will be a fair outcome, and vice versa. Furthermore, litigants from the judge's attitude in court deduct expectations about the outcome: in case the judge

behaves disrespectfully, an undesirable outcome is expected, and vice versa. But by way of general conclusion, I found that when explicitly asked to assess trial outcomes, people judge these on their own account. They look mainly at whether the sanction pronounced is proportional to the offence, whether it fits the particular offender and if the sanction is likely to incite the offender to desist from crime. I have not found much evidence of connections made between perceptions of procedural justice (that is, people's opinions on whether they were treated with respect for standing and in a neutral way) and perceptions of outcome fairness. The outcome of the trial was judged mainly against standards that do not relate to fair treatment.

§3.1.2. Correspondence to one's own sentencing preference

Only a few interviewees compared the sanction to what *they* had said it should have been. Correspondence of the outcome to the preference people had expressed during the pre-trial interviews was not a main determinant of satisfaction with the outcome. But correspondence to what one believes *the purpose of the sanction* should be *was* very important (rehabilitation, allowing one to, after having served the sanction, again lead a law-abiding life, desistance from crime). I would therefore carefully hypothesise that it is more important to litigants that the outcome of the trial contributes to fulfilling the purpose that the outcome should serve in their opinion, than that the outcome is exactly what they believe it should be.

§3.1.3. Informational social influence

It was observed that people who lack a reference point for judging the outcome of a trial often turn to others to tell them whether the outcome is fair. In social psychology, the term 'informational social influence' designates those situations in which one is unsure of the correct response to or the proper conduct in a given situation and therefore relies on the opinion of expert others to determine one's response or conduct (Aronson *et al.*, 2007). In sociology too, the importance of authorities or opinion leaders to processes of opinion-formation has been discussed (see e.g. the work of American sociologist Herbert Blumer (1948)). As Verfaillie (2010) writes, gaining insight into such processes requires a very different methodology than the quantitative methodology that is used in traditional public opinion research. An interesting new field of research to be explored therefore shows here.

§3.2. Considerations related to appeal

The results on victims' and offenders' decisions on whether to appeal the judicial decision are especially relevant to the value protection model, as this model states that moral mandates direct what people think and do independent of other motivational forces (Skitka *et al.*, 2005: 896-897). The

interview fragments on appeal should tell us how far litigants in a criminal trial are prepared to go to see their sentencing preference or moral mandate fulfilled: is seeing this preference fulfilled the single factor determining if one will appeal a judicial decision?

A first conclusion is that many elements withhold victims and offenders from filing an appeal. Sentencing preferences in other words may not be the only determinants of people's actions and therefore may not amount to moral mandates. Obviously more research is needed on the topic as none of the studies on moral mandates so far has looked into the issue of appeal to decisions in criminal trials, but the results of the current study for now suggest that people are not prepared to go to extremes to see their sentencing preference realised. Other factors, particularly the emotional investment and the time and financial resources required, bring people to decide to rest their case.

A second conclusion is that people may want to appeal a judicial decision not merely because they are dissatisfied about the compensation that was assigned to them or about the sentence that was imposed on them but also for symbolic reasons, that is, to receive formal recognition for the exact circumstances of the crime or to see the offender pronounced guilty, not per se sanctioned.

A third conclusion is that whereas victims are more inclined to accept a judicial decision as a matter of principle, offenders' acceptance of the sanction seems to depend more on the exact sanction. Victims usually say that they would accept any sanction that the judge pronounces because they are laymen and judges are trained. To many, it is a principle that citizens must accept what judges decide. Offenders' acceptance of the sanction seems to depend much more on the concrete sanction, especially on whether it is proportional to the crime and what its consequences are.

A fourth remark is that I found that the interviewees had a tendency to look for elements that have influenced the judgement. The participants were very active in enlisting the things that they thought had influenced the judge's decision. This suggests that those subject to a judicial decision feel a need to validate or 'authorise' the decision, whether or not they are satisfied about it. This reminds of just world theory that posits that people judge experiences in life holding on to the assumption that everyone gets what (s)he deserves. Those receiving a milder sanction than expected seem to feel the need to ascertain that they deserved it; they started enumerating a list of mitigating elements that they thought had influenced the judge's decision.

SECTION III. CONCLUSION

The most important question that was to be answered by this chapter was if the sentencing preferences expressed by the participants to the current study could be called moral mandates. What is to be concluded is that the value protection model's assertion that people hold strongly to the belief that the guilty should be punished and the innocent acquitted is indeed applicable to those actually experiencing the criminal justice system, albeit that in many victims' cases, the word 'punishment' should be substituted with the word 'censured'.

Still their concrete views on which sanction exactly would be the most fair one are not as firm, strict and non-negotiable as moral mandates are supposed to be. As said, the fact that the definitions of moral mandates that have been presented are rather abstract somewhat hampered the process of deciding whether the sentencing preferences that were expressed amounted to moral mandates. Yet as participants were to a large degree ready to accept another punishment than the one they had advanced, I would argue that no moral mandate on 'the most appropriate sanction' exists. In this, the study adds to the state of the art of research on moral mandates.

Based on the above overview of elements that were taken into account by the respondents when assessing the outcome of the trial in terms of fairness I propose that the theoretical perspectives on justice may have too narrow a view on the determinants of outcome fairness. The theories centre to a greater (the value protection model) or lesser (fairness heuristic theory) degree on one single element that is believed to determine the fairness of the outcome of a decision making process. Yet what I found is that multiple determinants play a role.

Chapter VIII. THE INFLUENCE OF PARTICIPATION IN MEDIATION ON PERCEPTIONS OF FAIRNESS

In a 2007 review of research on restorative practices, Sherman and Strang wrote that restorative justice can contribute to people perceiving the arms of justice "as helpful rather than harmful" (p. 78) and that it can increase trust in criminal justice. Looking at perceptions of procedural justice specifically, Shapiro and Brett (1993) and Brett and Goldberg (1983) indeed found that disputants perceive greater procedural justice in mediation procedures than in arbitration procedures, and Strang (2002) found high perceptions of procedural justice to result from participation in conferences. Also, victims and offenders who participated in mediation have been found to be more likely to rate the criminal justice system as fair and to be satisfied about the way their case was dealt with by the criminal justice system (Umbreit, 1992; Umbreit *et al.*, 1996; Strang, 2002).

In this chapter I will discuss the interviewees' opinions about (participation in) victim-offender mediation and whether the arms of justice are indeed perceived as more helpful when mediation is added to the criminal justice chain. I will try to understand whether and how participation in mediation influenced, first, the way the participants to the current study experienced their encounter with the criminal justice system and, second, their perceptions of the criminal justice system. It was hypothesised, based on the research mentioned above and on procedural justice theory, that this participative and communicative experience should enhance perceptions of procedural fairness and of the criminal justice system.

In the first section of this chapter I will look into the process of deciding on participation in mediation. An overview of the reasons that were cited for participating and the issues that had complicated the decision will serve to investigate how the offer for mediation is processed, and to detect whether reasons for participating in mediation are related or unrelated to the outcome of the case. In the second section I will describe the merits and demerits of mediation practices as they were specified by the participants. This overview will allow studying whether and how participation in mediation impacts upon perceptions of procedural justice, and whether and how it influences perceptions of the criminal justice system. These issues will be addressed in the third section.

SECTION I. DECISION MAKING REGARDING PARTICIPATION IN MEDIATION

Introduction

In this first section I will set out to investigate how the participants to the current study processed the offer of participating in mediation. In order to do so, first psychological literature on decision making under conditions of uncertainty or change will be consulted (§1). Next I will describe the reasons that the offenders (§2) and victims (§3) reported for having accepted the offer of mediation. In order to find out whether the reasons that were listed by the participants were representative of reality, the mediators that participated in the focus groups were asked to comment on these findings (§4). Next I take a more abstract perspective again and try to disentangle exactly how decisions on participation in mediation are made (§5). The section ends with a conclusion (§6).

§1. Theoretical perspectives on decision making

The reason for turning to psychological literature on decision making under conditions of uncertainty is that most participants were unaware of what exactly was offered to them when they were offered to participate in victim-offender mediation. Therefore, they had to make a decision on whether to participate in this programme under conditions of uncertainty. Useful starting points are the concept of mental scenarios advanced by Kahneman and Tversky, the concept of scripts proposed by Schank and Abelson and the concept of cognitive schemes advanced by Piaget.

Tversky and Kahneman (1973) propose that people maintain mental scenarios about events that when confronted with new situations are considered in order to predict the likelihood of various outcomes in the new situation. The mental scenarios contain ideas about what the future will look like, and new situations are scanned for similarities with the mental scenarios that are based on past experiences in order to assess the likelihood of various outcomes. In a similar vein, Schank and Abelson (1977) have written about scripts, *i.e.* schemes that describe expected sequences of events in well-known situations. People have scripts about, for example, going to a restaurant.

Piaget introduced the related concept of cognitive schemes. A cognitive scheme is "an organized pattern of thought or action that is used to cope with or explain some aspect of experience" (Schaffer and Kipp, 2010: 52). People hold cognitive schemes for various gestures (e.g. opening a cupboard) and for understanding the world (e.g. 'things that move are alive'). When confronted with experiences that cannot be explained by existing schemes, schemes are adapted through a process of assimilation, disequilibrium and accommodation. McCann *et al.*'s (1988) conceptual model on victim responses to victimisation provides a concrete illustration of the use of schemes. McCann *et al.* assert that people in response to life experiences develop cognitive schemes about self and others. These

are defined as "core beliefs or expectations about self and others" (p. 558), and shape the way life experiences are interpreted. Traumatic life experiences such as victimisation give rise to discrepancies between schemes and actual experience, as a consequence of which schemes are reassessed and adapted. The adapted schemes in turn determine responses to subsequent experiences.

How do these concepts contribute to understanding decision making on participation in mediation? The current study's findings suggest that people hold a scenario or script about what happens when a crime is discovered. The interviews showed that people hold many assumptions about the procedure that is followed once a crime is discovered, such as that the police will immediately apprehend the offender, that they will interrogate everyone involved, and that the offender will eventually be brought before a judge. Many assumptions are made about what is done and what happens in a suchlike situation, much like one holds assumptions about how a visit to a restaurant proceeds. When these expected events did not happen, respondents were puzzled; the events in this case did not match their mental scenario of events likely to occur in situations of crime.

When people are confronted with the mediation offer, it is most likely not included in their mental scenario of how criminal cases are dealt with because, as the interviews show, the vast majority of them has never heard of victim-offender mediation. Therefore there is no mental scenario or script to guide them in their choice, and the option of mediation does not fit in their cognitive scheme. Still all the participants to the current study at some point decided to participate in mediation. In the first section of this chapter I will look into this decision making process. This requires considering the reasons that were offered for accepting the mediation offer.

In order to structure those reasons, I take recourse to Lens *et al.*'s (2010) study on the Dutch victim impact statement scheme. Based on Roberts and Erez (2004), the authors discern between expressive reasons for using a victim impact statement and motives that relate to having an impact on the sentence. Expressive reasons are those that are process-related. These relate to feeling heard and feeling acknowledged, that is, to participating in the criminal proceedings. The second type of reason for using a victim impact statement relates to influencing the outcome of the trial, both in terms of sentencing and in terms of receiving compensation. I used this distinction in order to group the reasons that were given for participating in mediation given the distinction made in the literature on fairness between outcome-based models of justice and process-based models of justice. Yet I found that these two categories did not cover all the reasons that were given. The interviewees cited a number of reasons for taking part in victim-offender mediation unrelated to the outcome of the trial or to participation in the criminal proceedings. Therefore, I created extra categories.

§2. Offenders' reasons for participating in mediation

In this part I will present the offenders' reasons for participating in mediation. In order to truly illustrate the decision making process, I will also list the issues that had caused them doubts. Remark that all but seven offenders cited a *combination* of reasons for participating in mediation.

Many of offenders' reasons for participating in mediation were **outcome-related reasons**[53], that is, reasons that relate to influencing the outcome of the trial. Nine (out of twenty-three) offenders said that (part of) their motivation for participating in mediation was the hope that doing so would have a mitigating effect on the sentence. Four participated because they wanted to show the judge that they had good intentions (make a good impression on the judge), two participated because doing so would allow proving their innocence, and two reasoned that as they would have to pay the victim anyway, it would be better to have that issue settled before going to court. Finally, three offenders decided to participate in mediation because they hoped that it would allow avoiding court. Some offenders combined several of the above reasons. In all, then, fifteen of the twenty-three offenders participating in the pre-trial interviews explained their motivation to participate in mediation (at least in part) with reference to (one or more) outcome-related reasons.

"Omdat we al eens een paar keer gehoord hebben dat als er een rechtszaak komt, dat ze daar wel rekening mee houden." (Male offender, intentional assault and battery and vandalism (respondent 9), participant)

"Ik zeg ik wil gerust komen, om voor de rechtszaak toch ook een beetje een positieve invloed te laten zien, dat ik niet zomaar zeg ik veeg er mijn voeten aan, ik wou echt wel de stappen ondernemen om dat tot een goed resultaat te brengen." (Male offender, intentional assault and battery (respondent 8), non-participant)

A second category of reasons for offenders to participate in mediation are **relational reasons**, that is, participating in mediation in order to restore the relationship with the victim. Eleven of the 23 offenders indicated that their motivation to participate was one or more of the following: to talk to the victim (N = 3), to work on their relationship with the victim (N = 4), to express remorse or offer apologies (N = 3), to tell the victim what had caused the offence and reassure it that it would not happen again (N = 3), and/or to take responsibility and answer the victim's questions (N = 3).

[53] One could suggest to use the term 'instrumental reasons', yet I find this term unhelpful as most reasons for participating in mediation could be called instrumental reasons. Participating in mediation with the aim of restoring the relationship with the victim, for example, also is an instrumental reason, but is clearly different from participating with a view to influencing the outcome of the trial.

"Ik wil mijn excuses aanbieden, en een beetje uitleggen wat er is gebeurd, ja, als je zomaar aangevallen wordt door vier mensen moet je jezelf wel onveilig voelen op straat, dus ook een beetje zeggen dat het niet persoonlijk was." (Male offender, violent robbery (respondent 48), participant)

"M: *(moeder van respondent)* X. *(respondent)* heeft direct gezegd, ik wil met die jongen praten. (…)
R: Ja, toen ik thuiskwam van het politiebureau heb ik dat direct gezegd. (…) Ik voelde mezelf zo… ik weet niet, ik kon niets doen. Als ik dan met die jongen kon praten… maar dat kon ik ook niet. Dat was een heel ambetant gevoel." (Male offender, intentional assault and battery (respondent 26), participant)

A third category of motivations for participating in mediation were **expressive motivations**. I found one example of an offender participating in mediation because she wanted to talk to someone (*i.e.* the mediator) about everything that was happening, and about the trial that was approaching. A small incident had gotten completely out of hand, and now she could not believe what was happening to her. She combined this expressive motivation with outcome-related motivations for participation.

"Je ziet die rechtszaak in zicht komen en je wil daarover babbelen en je zegt dan van kijk, als die bemiddeling toch nog een oplossing kan zijn…" (Female offender, intentional and unintentional assault and battery (respondent 46), participant)

A fourth category of reasons for participating in mediation for offenders was **participating because someone had told or advised them to**. One offender had participated because he thought that mediation is a routine component of the criminal proceedings, and one person had been pressured by an investigatory judge to participate in mediation (contacting a mediation service was a condition for his provisional release), though I should add that this person was also intrinsically motivated to participate in mediation (for a relational reason). Three people said that their lawyer or a justice assistant had influenced their decision to participate.

"Ik ben eerst met mijn brief naar de advocaat gereden, ik zei kijk ik heb die brief gekregen, wat moet ik daarmee doen." (Female offender, intentional and unintentional assault and battery (respondent 46), participant)

"R1: Omdat dat de gang van zaken is... ik weet niet... wij weten ook niet hoe dat nu gaat voortgaan he.
R2: Mja, de politie geeft dat mee, je luistert, ja, je denkt dat je dat moet doen he.
R1: Ja, ik dacht dat dat moest... allez, moeten niet, maar dat dat gewoon zo is. Dat dat erbij hoort." ((Parents of) male offender, burglary and theft (respondent 41), participant)

A broad range of **other reasons** were given by offenders for their decision to accept the mediation offer. I could not group these reasons into thematic categories because they are so varied. The decision to participate may depend on who the victim is: one offender had participated because his son, the victim, had taken the initiative. Another one thought participation in mediation was the only way to avoid having to take a lawyer to defend her in court (as a lawyer was too expensive for her). Another offender hoped to be able to reconstruct with the victim the events of the night of the crime, and one said that it is better to tell the victim how one came to commit the crime before the victim makes up its own story. Finally, two offenders reacted positively to the offer of mediation because of previous good experiences with mediation. Offenders' reasons for participating in mediation, then, are extremely varied.

"Ik vind dat heel heel ambetant, maar dan kun je misschien gaan uitleggen hoe het gebeurd is. Dan dat ze er achteraf hun eigen verhaal van maken." ((Mother of) male offender, violent robbery (respondent 48), participant)

I will now turn to a number of **issues** that offenders said **had complicated the decision** on participation. A first example is that of two men who had been involved in a street fight with strangers. They had been planning to participate in mediation until they had heard from the mediator that the other people involved in the fight were classified as victims and that they were labelled as the offenders. This to them felt so unfair that they decided to drop out of the mediation procedure. One person wondered if the returns of mediation warrant the time and effort required. In his view, the procedure is too complex; too many preparatory talks are conducted before the parties actually meet. Another factor that caused doubts was the belief that the chance of success was small as the parties' claims and opinions appeared to be too different to be settled.

"(…) ik was er ook totaal niet over te spreken dat zij als slachtoffer werden aanzien en wij als dader. (…) toen ik hoorde wat die bemiddelingsassistent te zeggen had, dan dacht ik neen, bemiddelen, neen. (…) Zo zit de situatie niet in elkaar." (Male offender, intentional assault and battery (respondent 7), non-participant)

"Dus hij *(het slachtoffer)* is daar naartoe moeten gaan, dan heb ik nog eens een gesprek met haar, ok, dan kan ze nog eens aftoetsen, maar dan moet ze dat nog eens gaan aftoetsen met hem?! Ook nog eens apart!? En dan pas mag ik hem samen met haar zien! Ik zeg, dit gaat mij wel te ver. (…) Omdat dat niet in verhouding is. Allez, dat gaat mijn petje te boven." (Male offender, intentional assault and battery (respondent 36), participant)

"Daarom dat ik het niet goed zie zitten, die bemiddeling. Allez, ik wil het doen he, maar (…) het bedrag is te groot, het verschil is te groot." (Male offender, intentional assault and battery and vandalism (respondent 10), participant)

§3. Victims' reasons for participating in mediation

In this part I will focus on victims' motivations for participating in mediation and pay attention to those considerations that had caused them doubt too. The victims too cited a wide range of reasons for participating in mediation, and combined several reasons. The majority of these were reasons that related to participating in mediation in function of one's **well-being**. Well-being refers both to emotional well-being and to protection from further victimisation.

As for emotional well-being, first, the need for information about the offender and about the criminal proceedings was a main motivation for participation: twelve victims participated in order to receive answers to questions from the offender, and five victims hoped to receive information about the trial or about one's rights as a victim. Second, mediation provides for a chance to participate in the criminal proceedings in an emotionally safe way: it allows conveying messages to the offender without having to face him in person (N = 1) and participating in the trial without having to go to court (N = 3). Third, two victims held the belief that when a case has gone through mediation the criminal proceedings will run faster and smoother, and will thus be less emotionally exhausting.

"Ik wil gewoon, via jullie en (bemiddelaar) eigenlijk, informatie over hoe ik het het beste kan aanpakken eigenlijk. Ik vind het goed dat zoiets bestaat. Want ik weet niet hoe ik het moet aanpakken, waar ik naartoe moet gaan, waar ik het beste een advocaat kan halen." (Male victim of intentional assault and battery (respondent 25), participant)

"V: Dus je motivatie om mee te werken aan de bemiddeling was echt wel het vermijden van…
R: Van heel de poespas en vooral het vermijden van die rechtszaak. (…) Voor mij dan he, dat ik er niet zou moeten zijn als burgerlijke partij." (Female victim of intentional assault and battery (respondent 32), participant)

As for victim safety, three victims, all victimised by non-strangers, perceived mediation as a good opportunity to tell the offender that he needs to stop. They wished to protect themselves from further victimisation. In a similar vein, four victims, all victims of strangers, hoped that they could bring the offender to realise what he had done so that the facts would not repeat (educative motive).

"Ik heb dat besproken met (bemiddelaar), en ik had gevraagd aan haar om een gesprek te hebben. Zij, ik en hij. Om hem duidelijk te maken dat dat zo niet verder kan." (Female victim of stalking (respondent 18), non-participant)

"Wat ik daar goed aan vind is dat samen rond de tafel gaan zitten met die daders. Dan worden zij, vind ik, meer aangesproken op hun verantwoordelijkheid. (…) Die mensen *(de slachtoffers)* krijgen dan een gezicht. Vind ik." (Female victim of burglary and theft (respondent 42), participant)

A second category of reasons for participation were **expressive reasons**. Two victims wanted to take the opportunity to tell the offender about the damage he had caused. One person perceived mediation as the only channel through which she could tell the offender's parents what their son had done, and one person said that participating in mediation allows participating in the trial to a greater extent – there is less time in the courtroom to tell one's story than in a meeting with a mediator, and what is said during mediation can be communicated to the court, he reasoned.

"Voor het gerecht eigenlijk. Want als je daar zelf moet gaan staan en je uitleg moet gaan doen is dat moeilijker." (Mother of male victim of intentional assault and battery (respondent 30), participant)

A third category of reasons are those that relate to **receiving compensation or influencing the outcome** of the trial. Four people indicated that mediation is a good way to/provides greater certainty that one will get compensation, and one thought that it would allow showing the judge that one is prepared to work on a solution. Next, four victims explicitly said that they had decided to participate in mediation with a view to influencing the sentence, yet each of them wished to influence the outcome in a for the offender *positive* manner. Their reason for participating in mediation, then, was an **altruistic** one. They wanted to save the offender the trouble of going to court and/or hoped that by participating in mediation they could spare the offender a criminal record.

"Dus we dachten, zo is het misschien nog makkelijker voor achteraf, zo hebben we misschien ons geld sneller terug." (Male victim of theft (respondent 29), non-participant)

"En toen heb ik met de bemiddelingsdienst contact opgenomen en gezegd dat ik gerust wilde bemiddelen, *(verheft haar stem)* om hem toch maar die rechtbank te besparen." (Female victim of stalking (respondent 2), non-participant)

"Als het mogelijk is, als we er ergens inspraak in kunnen hebben dat de persoon in kwestie geen strafblad krijgt door bemiddeling of zo, dan willen we dat zo doen." (Male victim of theft (respondent 37), non-participant)

Some of the victims acting out of altruistic reasons did feel puzzled by their feelings. They said that they felt stupid to still worry about the offender after everything he had done to them, or that they would want to yell at him but do not do so because they feel sorry for him too.

"Ondanks het feit dat hij mij zo lastig gevallen heeft, ben ik nog altijd bezorgd. Stom he, ik weet dat." (Female victim of stalking (respondent 2), non-participant)

"Ik wil er eigenlijk eens goed kwaad tegen zijn. Maar dan aan de andere kant heb ik er ook nog medelijden mee." (Mother of female victim of sexual abuse (respondent 50), participant)

A fourth category of reasons are the **relational reasons** for participating in mediation (mentioned by five victims). A victim of partner violence used mediation as marriage counselling, three wanted to restore the relationship with the offender so that they would be able to talk again or to take away feelings of fear of the offender, and one wished to restore the relationship with the offender's daughter. He had reported the crime to the police and now felt guilty towards the offender's daughter. It may be interesting to add that four of these five victims had been victimised by a non-stranger; the fifth had been victimised by strangers but said that there was a high chance that he would meet them in nightlife at later occasions.

"En dan ook omdat ik haar dochter ook wel redelijk goed ken. (…) Dus om die relatie te herstellen. Dat is een doodbraaf kind. Zij ziet haar moeder hier plots gearresteerd worden, en dan ben ik zogezegd de boeman he." (Male victim of theft (respondent 5), non-participant)

"Omdat ik eigenlijk toch heel de tijd na de feiten schrik heb gehad om hem tegen te komen. (…) Want de dader woont hier niet ver af, dus die kon ik alle momenten wel eens tegenkomen he. Voor dat dan. Dat ik hem toch terug aan kon kijken." (Female victim of intentional assault and battery (respondent 32), participant)

Victims too take recourse to **professionals to advise them on whether to take the offer for mediation**. Two victims had consulted their lawyer and some had been advised by a victim support worker or their psychologist. It appears that they usually followed these people's advice.

"Die van slachtofferhulp raadde het af om hem terug te zien (…) en toen op dat moment kon ik dat nog niet aan om hem terug te zien." (Female victim of intentional assault and battery (respondent 32), participant)

Other reasons cited by victims for deciding to accept the mediation offer were: the belief that the authorities would not make such an offer if they would not believe it to be a useful thing (N = 2), because it is probably interesting for the authorities (N = 1), because of a previous positive experience with mediation (N =1), to reconstruct what exactly had happened because one was drunk at the time of the offence (N = 1), being a curious person open to new things (N = 1), because the offence was not serious (N = 1), because mediation allows making practical arrangements with the other party (N = 1), on the advice of the police, the insurance company or a friend (N = 2), and because one's occupation includes working with victims (N = 1).

"Ik geloof ook wel dat dat professionals zijn en dat die ook goed nadenken over in welke zaak ze een bemiddeling voorstellen en in welke niet. Die hebben daar meer ervaring mee dan ik. Dus als die dat voorstellen zullen die ook wel denken dat dat nut heeft." (Female victim of robbery (respondent 47), participant)

"Ja weet je, het is nu niet, allez, ze heeft wel wat geld gestolen, maar dat is het dan ook. Het is nu niet dat dat zo'n grote zaak is. Dus ja, als we het zo kunnen oplossen… Dat is misschien beter he." (Male victim of theft (respondent 29), non-participant)

The review above enumerated the reasons that victims mentioned for participating in mediation. Yet many of them had had serious **doubts about the offer**. A first concern relates to the behaviour of the offender. Some victims were quite anxious that the offender would act arrogantly during the meeting. Another consideration was the emotional impact of seeing the offender again. Some worried that the impact could be such that one's recovery process would be interrupted or would even backlash. One victim was also afraid that the offender would be able to persuade her of his good intentions all over again. Another one feared that participating in mediation would give rise to more questions than it would solve – what, for example, if the different offenders would contradict each other's accounts of what happened?

"Waar ik ook een beetje bang voor ben, is de houding dat die mannen zullen aannemen. Ik weet dus niet wie ze zijn he. Dat had ik aan (bemiddelaar) ook gezegd, stel nu dat zij daar heel arrogant gaan zitten en, ja, mij een beetje uitlachen… Maar hij zei, door het feit dat zij vrijwillig zijn ingegaan op dat aanbod, vermoed ik van niet. En hij is er ook nog natuurlijk." (Female victim of burglary and theft (respondent 42), participant)

One victim heavily doubted whether to participate in mediation in part because she knew that her husband would have a difficult time with it. Furthermore, knowing that the offender had a sincere reason for participating in mediation was a precondition for many victims to decide to do the same. When victims suspect that offenders only wish to participate in mediation in order to make sure that they can make a favourable arrangement on compensation of damages or in order to influence the judge they are more likely to drop out. A final consideration that might lead victims to decide not to participate in mediation is the fact that one is obliged to think back to the offence. At some point, it seems, victims want to put the offence behind them and no longer wish to be involved, whereas mediation requires considerable emotional engagement and energy.

"Had die persoon zelf, had die nu bijvoorbeeld gezegd, 'ja X. *(respondent)*, het is spijtig', of een beetje spijt betoond. Maar dat gebeurt dus ook niet he. Het enige wat die persoon interesseert, is dat hij geen euro zou moeten betalen. Dat is het enige." (Male victim of intentional assault and battery (respondent 11), participant)

"Op een bepaald moment wil je dat hoofdstuk afsluiten. En dan denk je van nu is het genoeg geweest, al die ondervragingen en dit en dat (…). En voor de rest wil ik daar misschien niet meer bij betrokken zijn." (Mother of female victim of sexual abuse (respondent 50), participant)

§4. Mediators' views on the findings

In order to check whether the list of reasons for participation in mediation that resulted from the current study is representative of reality, the mediators involved in the focus groups were asked to comment on this list. They were asked to consider carefully whether the list included motivations that they did not frequently encounter in practice and, conversely, whether any motivations that commonly occur in practice had been left unmentioned by the participants to the current study. Here are some findings of these focus groups.

First, the mediators agreed that the list contained no surprises: all the reasons listed, both offenders' and victims' ones, were recognisable to them. They also confirmed that there is rarely just one reason for people to participate in mediation: *"Dat het zelden één specifieke reden is, inderdaad dat klopt, meestal is het een combinatie van redenen."* Still there were a number of reasons that the mediators said occur oftentimes in practice but that were not included in the list resulting from the current study. These are the following. *Victims* were said to often wish to participate (1) in order to put the suspect in his place, that is, to reprimand him personally, and (2) out of concern that if one does not accept the offender's request for setting up a mediation process, the offender may take reprisals. Mediators said that the first of these reasons is rarely openly admitted by victims, which may explain why it was not found among those participating in the current study. One extra reason mentioned for *offenders* was 'to ask for forgiveness'; yet note that it concerns asking for forgiveness not out of guilt but for religious reasons (Muslim culture). The overall conclusion is that the list of reasons for participation in mediation composed on the basis of the current study is representative of reality.

Second, mediators were not surprised about the fact that quite some outcome-related reasons led offenders to participate in mediation. They mentioned that it is understandable and human to seize opportunities for influencing the sentence. Also, they as mediators during the first encounter with offenders need to inform them of what happens with mediation agreements, and at that point necessarily mention that the judge may take it into account when deciding on the outcome *("Je zegt dat als er een overeenkomst is, dat de rechter daar rekening mee kan houden, dus…"*). It is therefore logical, they said, that offenders take this element into account when deciding on participation in mediation.

In this respect, mediators said that one should keep in mind that offenders' participation is never completely voluntary, because they believe that if they refuse to take part in mediation that will be perceived by the judge as negative: *"Je mag nog tien keer zeggen bij een dader van je móet dit niet doen, maar*

ze doen het toch want 'stel dat ik het niet doe gaat het in mijn nadeel spelen'". One mediator replied that results from a poll among the judges in her judicial district indicated that these attach no negative consequences to not having participated in mediation, but do take the fact that mediation has taken place into account as a positive element when determining the sentence.

Related to this is a third remark. Participants to one of the three focus groups discussed whether they set up a mediation procedure when people clearly only use it to settle the damages and do not want to go into the immaterial consequences of the crime. In the literature, one reads that mediation should not be primarily settlement-driven but dialogue-driven and that agreements are secondary to the dialogue between the parties (e.g. Umbreit *et al.*, 2004). Yet the mediators said that it is perfectly eligible to start a mediation process if both participants' wish is indeed to only discuss the settlement of damages: *"Als bemiddelaar krijg je je mandaat van de partijen. Als ze het daar allebei over eens zijn ga jij niet zeggen van 'ah neen dat gaan we niet doen, we gaan het alleen maar over de morele kant hebben'"*.

Fourth, mediators remarked that the list suggested that the reason victims want to participate often has to do with asking the offender questions, whereas offenders' motivation for participating seldom is incited by a wish to answer victims' questions. The mediators confirmed that offenders when they hear that victims want to ask them questions say they are prepared to answer these, but it is not their main motivation for participating: *"Dat daders inderdaad minder vragen hebben, dat het meestal is vanuit 'als ik iets kan doen', van als de andere partij vragen heeft wil ik die wel beantwoorden. Maar niet van die vragen wil ik zelf stellen aan het slachtoffer. Bij slachtoffers is dat juist wel. Dat klopt helemaal met de praktijk."*

Fifth, it was confirmed during the focus groups that some victims participate in mediation in order to communicate to the judge that they do not want the offender to be punished severely. One mediator said that she is often confronted with victims who say that they did report the crime but never meant for the case to be brought before a judge. Such victims often like to make an agreement with the purpose of informing the judge of this: *"Ik vind dat dat toch wel vaak voorkomt, dat mensen zeggen: 'ik ben wel een klacht gaan indienen maar zo erg was dat nu ook niet dat dat voor de rechtbank moet komen, dat heb ik niet bedoeld'. En dan proberen ze een overeenkomst te maken waarin zij als slachtoffer die nuance meegeven"*.

Finally, the mediators were surprised that a main reason for victims to participate in mediation is to gain information about their rights during a criminal procedure. Other services exist that should take up the task of informing victims of their legal possibilities, so they said. These results then show that victims apparently do not find their way to these other services (*i.e.* victim support services). More on this last topic follows in the part on the merits of mediation.

§5. The process of deciding on participation in mediation

Theory building on the process of decision making on participation in mediation is rare. Scholars have written about which victims are more likely than others to participate in mediation (referring to e.g. the type of harm and the relationship with the offender, see Peachey, 1992; Umbreit *et al.*, 2004), but neither the decision making process of victims nor that of offenders has been carefully studied.

One attempt for theory development was undertaken by Wall *et al.* (2001), but before delineating their proposal I should mention that they did not study mediation in criminal cases in particular. They propose a general framework for interpreting people's decision to turn to a mediator to solve problems in several domains (e.g. schools, international relations, labour-management negotiations) based on expectancy theory. The authors advance the "expected payoffs" construct to propose that – I quote – "disputants will seek mediation from a third party to the extent that each expects his or her own net outcomes – rather than the joint outcome – from the mediation to be greater than those from the current interaction or from an alternative approach" (p. 374). The authors propose that both when deciding on participation in mediation and when evaluating the experience disputants compare the (expected) outcomes of mediation with those that can/could be expected from the alternative (e.g. adjudication). Therefore, any factors that raise the expected outcomes from mediation or lower its expected costs should lead disputants to participate in mediation, whereas any factors that raise the expected outcomes of the alternative or lower its expected costs should lead them to opt for the alternative. Disputants, one can conclude, are viewed as rational calculators of their own outcomes and benefits. Examples given by Wall *et al.* as factors influencing the costs and benefits of mediation are the fact that a lawyer is no longer required in case one has participated in mediation and evidence that mediation reduces violence. Rational cost/benefit considerations are perceived to determine the chance that disputants will engage in mediation.

At first sight, the participants to the current study indeed seemed to make cost/benefit considerations in order to decide on participation in mediation. Offenders for example calculate the chance that participation will lower the sentence or help restore the relationship with their victim; victims among other things try to envisage whether participating will affect their well-being in a positive or negative way. Returning to the literature on scripts and mental scenarios, one could say that those who are proposed to take part in mediation build scenarios about the likelihood that certain outcomes will be obtained.

The results show that people build scripts not only about the expected outcomes of mediation but also about what will happen *during* mediation. They try to imagine how the other party will behave (and often fear that the other party will be angry or resentful), what will be said and how they

will act. In conclusion, then, the process of decision making on mediation seems to include building a scenario that informs people, first, about the likelihood of e.g. the other party acting angry or friendly, that is, about the process of mediation, and, second, about the range of possible outcomes. The supposed outcomes and the likelihood of the procedure being beneficial on an affective level (one's own emotion well-being, restoration of a relationship) influence decision making about participation in mediation.

Yet note that Wall *et al.* (2001) expect disputants to base their decision on participation in mediation only on *their own* expected outcomes and benefits. They do not, so the authors argue, take into account the joint outcome, because they mistakenly believe that in case the opponent party's outcome rises their own will decrease. The belief that joint outcomes are a fixed sum leads people to feel less motivated to seek mediation in case they perceive many factors that will likely raise the opposing party's outcome, as they believe that this means that their own outcome will be lower. Hollander-Blumoff and Tyler (2008) have labelled this kind of negotiation 'distributive bargaining'. Yet what I see in the sample is that the litigants did not only consider whether participation in mediation would yield positive outcomes for themselves, but also whether it would be beneficial for (1) the other party and (2) society in general (though the latter worry was only expressed by victims).

For example, a number of victims participated in mediation in the hope that it would allow them to communicate to the judge that they would not want the offender to get a criminal record. These people do look at the joint outcome, as they feel that the offender not receiving a harsh sentence is also beneficial to them, because the offender is their husband, because they fear reprisals in case the offender is punished severely, or simply because they feel that someone who is punished severely for an act of wrongdoing is more likely to repeat his offence as (s)he sees no other way out financially or learns new techniques in prison. Another example is that of victims motivated to participate in mediation in order to make the offender realise what (s)he has done. These victims want to prevent that the offender commits new crimes in the future, which is not only in the offender's interest but also in the interest of their own or societal security. Offenders who participate in order to tell the victim that it need not worry that the offence will be repeated too envisage the benefits for the other party. One may then conclude that whereas adjudication in court by definition puts one party in the winning position and the other in the losing position (though of course this is a stereotypical view on court cases that should be nuanced in some cases), mediation is not perceived like this. Both one's own and the other party's interest are considered by many of those deciding on whether to take part in mediation, though I do have the impression that victims are more likely to see things from this perspective than offenders. Hollander-Blumoff and Tyler (2008) have labelled mediation processes in which the parties consider how both parties' needs may be met 'integrative bargaining'.

The finding that other than one's own self-interest motivations play a role in deciding to engage in mediation is supported by Van Camp's (2011) findings. This author from a series of interviews with crime victims who participated in mediation or conferences too concluded that victims act not only in their own interest but also take into consideration the interest of the offender or of society in general.

§6. Conclusion

This first part of the chapter was meant to provide insight into the functions that victims and offenders assign to victim-offender mediation, and into how they decide on participating. A first conclusion is that the decision on participation in mediation is a complex one, marked by conflicting motivations. Many concerns play a role when deciding on participation in mediation; people seem well aware of the possible disadvantages of participating. A second, related conclusion is that people seldom participate in mediation for one single reason; often multiple reasons lead them to participate. A third conclusion is that victims and offenders do not only participate in mediation because they see it as a chance to influence the outcome of the trial or to be involved in the criminal proceedings, but also because (1) it allows normalising the victim-offender relationship, (2) it offers an opportunity to secure one's emotional and physical safety (victims only), and (3) others advise them to participate. Finally, the validity of the findings was confirmed by experts, *i.e.* the mediators participating in the focus groups.

SECTION II. THE MERITS AND DEMERITS OF MEDIATION PRACTICES

Introduction

All respondents were asked to evaluate their experience with the victim-offender mediation programme, both during the first wave interviews and during the second wave interviews. In this section I will describe the positive and negative aspects that were ascribed to the programme. As explained, two groups of litigants participated in the study, one group consisting of those who participated in the programme, the other group consisting of those who wished to participate in mediation but had not been able to because the other party refused. Still the opinions of the latter group too were important, as they had all met a mediator at least once and therefore had an experience with the programme too, albeit a limited one.

What has been said about mediation by the participants should allow disentangling exactly why mediation is appreciated or not, and to discover whether the antecedents of procedural justice (standing, neutrality and performance) or other factors determine people's views on mediation. In the first part of this section, I will describe the positive features of mediation that were brought to the fore by the interviewees (§1). In the second part, I will draw attention to the features of mediation that were considered negative (§2). I will each time start with a description of the features that both victims and offenders ascribed to mediation and afterwards look into the issues that were mentioned only by victims or offenders. At the end of each part, the results will be discussed.

§1. The qualities of mediation

§1.1. Victims and offenders

§1.1.1. Major source of information

A first reason why participants to the current study, both victims and offenders, highly appreciated the victim-offender mediation scheme was that mediators had provided them with a lot of information. Fifteen victims and six offenders during the pre-trial interviews explained that mediation had so far been especially helpful for them because the mediator had supplied them with information about the case, about their rights and/or about the other party.

"Ik ben via (bemiddelaar) te weten gekomen dat mijn zaken geseponeerd waren, ik heb daar nooit iets van gehoord. Als ik slachtofferhulp en (bemiddelaar) niet had gehad, stond ik nergens met mijn zaak, dan wist ik totaal van niets." (Female victim of stalking (respondent 18), non-participant)

"Ook tegenover het slachtoffer, als die er dan mee akkoord zijn om zo'n gesprek aan te gaan, kun je eigenlijk ook de ervaringen een beetje delen, wat zij ervan ondervonden hebben. En wat dat betreft vind ik dat een heel goed initiatief." (Male offender, intentional assault and battery (respondent 31), participant)

The fact that receiving information about one's rights and legal options is a main reason for satisfaction with mediation was heavily discussed by the mediators participating in the focus groups because many were astonished about the significance of this aspect of their job. They were aware that they are important information sources, and in fact, providing litigants with information about the other party is one of their main tasks. But providing victims[54] with information about how a trial proceeds and about their rights is not the core business of mediators, all the more as it is the core business of victim support organisations (which are relatively well-established in Belgium): *"Wij doen dat wel maar dat is niet in eerste instantie onze opdracht"/"Het gaat erom dat er op zich andere diensten zijn die gesubsidieerd zijn en dienen om die informatie te geven"*. The mediators acknowledged that starting up mediation is not possible without thoroughly informing litigants about where mediation is positioned in the criminal justice chain *("Je móet eerst informeren voor je tot uw bemiddeling kunt komen"*); when engaging in giving information it is always with a view to explaining what mediation is: *"Als je informatie geeft is het ook altijd in functie van een eventuele opzet van een herstelbemiddelingsprocedure. Dus het is niet louter de juridische procedure voor het slachtoffer uitleggen"*. But the mediators did ask the question how far to go and from when on to refer litigants to other services, as it is not their job to provide legal services.

In conclusion, mediators were worried especially that their service would *only* be appreciated for the fact that they give litigants a lot of information on legal matters (*"Ik herken dat wel, ik geef veel informatie, maar ik hoop dat dat iets bijkomstig is, dat de rest wel overweegt")*. Yet as one mediator reasoned, this aspect of the service is most important at the outset of the mediation procedure. He presumed that as the procedure runs, people see the value of mediation on other levels. The results of the study corroborate his presumption: information was a main topic during the first wave interviews, but other aspects were much more prominent among the positive consequences of mediation mentioned during the second wave interviews.

§1.1.2. Diffusing tensions with respect to attending the trial

A second positive consequence of mediation mentioned by victims, one offender and the mediators during the focus groups, is that those who attend the trial are less tensed about attending the trial than they would have been if they had not participated in mediation. As for victims, this is because

[54] Victims especially (as opposed to offenders) valued mediation because of being informed on their rights.

the confrontation with the offender has already taken place. A mediator added that having met the offender in mediation also allows victims to better prepare for the confrontation in court: they find out what kind of person they will be faced with and thus can better prepare the trial. The offender talking about this believed that when parties have arranged compensation through mediation, or have met each other, victims' negative feelings are defused before the parties meet in court.

V: Was je zelf zenuwachtig of nerveus om daar naartoe te komen?
R: Die rechtszaak? Niet zo eigenlijk, neen. (…) Dat is ook wel, ik denk dat dat is omdat, de bemiddeling is de eerste keer dat ik zou zien wie dat waren he. Als dat op de rechtszaak was geweest was ik daar ook wel nerveuzer voor geweest." (Male victim of violent robbery (respondent 49), participant)

"V: Wat heeft dat voor u als positief teweeggebracht?
R: Awel toch ja, met de slachtoffers dus, ik heb ze niet gezien maar toch, ze kalmeren een beetje, zeggen kijk, via een tussenpersoon, ze kunnen een beetje, hun geld terugkrijgen, ook een beetje emotioneel, moreel dus, rustig." (Male offender, fraud (respondent 33), participant)

§1.1.3. Reducing the costs of litigation

Two respondents, one victim and one offender, said that one reason why mediation is a good initiative is because it allows reducing the costs of litigation. The victim spoke in terms of time investment, the offender spoke in terms of legal costs.

"Ça a permit de ne pas discuter et perdre du temps devant le juge. (…) Ça permet de gagner au niveau du temps. La procédure, ça dure..." (Male victim of intentional assault and battery (respondent 3), participant)

"R: En het is beter dan het gerecht natuurlijk he.
V: Waarom precies?
R: Ja eerst en vooral al die gerechtskosten erbij nog een keer." (Male offender, fraud (respondent 33), participant)

§1.1.4. Assisting in fact-finding

One couple (respondents 30 and 31, case of family violence) highly valued mediation because it had allowed them to communicate to the judge about their current family situation, that is, about how they had managed to leave the offence behind them as a family and had restored their relationship as a couple. It was important to them that the judge would be aware of their current situation when deciding on the sentence. One offender mentioned mediation when enumerating all the things that he said had been done in order to investigate the case well.

"Door alles dat er nu is, bemiddeling, probatieassistent, die hier persoonlijk komt zien, overal worden verslagen van gemaakt, denk ik, als ze dat fatsoenlijk lezen, denk ik dat je een rechtvaardige rechtszaak krijgt." (Male offender, partner violence (respondent 17), participant)

§1.2. Victims specifically

§1.2.1. Victim recovery

Individuals falling victim to a crime generally experience emotional distress as a consequence of the offence. The emotional consequences of victimisation have been well-documented by, among others, McCann *et al.* (1988) and Ruback and Thompson (2001). The victims participating in the current study mentioned such consequences as fear of leaving the house or never leaving the house without a mobile phone, being more anxious than before when family members leave the house, fear of crossing the offender in the street and fear for reprisals, not opening the door after dark, sleeping problems and nightmares, shame, depression, suicidal thoughts, feeling unsafe in one's own house, thinking about moving to a new place, always being on guard, that is, continuously scanning public places for possible threats, reconsidering one's marriage, avoiding to sit in the chair where the offender always used to sit, and diminished faith in employees. Being reminded of the facts each time one's lawyer or psychologist or the mediator calls, adds to the burden.

From victim interviews I deducted a number of ways in which participation in mediation had helped victims recover from the facts and had relieved their emotional distress. Yet first I should mention that two victims during the first wave interview had expressed worry that participating in mediation would have a *negative* impact on their recovery, referring to the offender during the face-to-face meeting possibly behaving in such a way that it would upset them, or to the offenders contradicting each others' account of the facts.

"Ik was wel een stukje bang en ongerust van, stel dat ik nu door daaraan deel te nemen, als dat tegenvalt, dat ik dan wel ineens problemen krijg met dat te verwerken." (Female victim of robbery (respondent 47), participant)

During the second wave interviews four victims, including the two that had worried about negative consequences, literally said that participation in mediation had had a positive effect on their recovery. One of them referred to the fact that after meeting the offender she no longer lived under the constant worry of what would happen if she would pass him in the street. The second victim said that the chaos of thoughts in his head had calmed down after meeting the offenders; the third victim (she did not participate in mediation because the offender refused) had experienced a catharsis after she had received information about the offender's perspective on the facts from the mediator.

"Ik heb het gevoel dat dat allemaal beter op z'n plooi is gekomen. (…) Dat is zo'n chaos van gedachten en gevoelens en dat moet eigenlijk tot rust komen zal ik zeggen he. Ik denk door dat gesprek te hebben en zo dat dat geholpen heeft om dat tot rust te brengen." (Male victim of violent robbery (respondent 49), participant)

"Het psychologisch vlak, die angst, is wat weggeëbd, niettemin, toen ik (bemiddelaar) van de bemiddelingsdienst twee weken geleden aan de lijn kreeg, kreeg ik wat informatie over de dader." (Female victim of intentional assault and battery (respondent 1), non-participant)

The fourth victim testified that after having met the offender through mediation she had been able to give the offence a place in her life and to release negative emotions. This victim's story suggests that the impact of mediation on victim recovery is a process; it does not only result from the face-to-face meeting with the offender but also from the preparation of the confrontation. The first step of the process is being able to talk to somebody about what happened. Second, one gains insight into what has actually happened, third, this victim said, she had at last been able to release her feelings of guilt, and, finally, during the confrontation with the offender she had been able to show him that she had recovered well. This victim furthermore compared her recovery process to that of her husband, who had not been willing to meet the offender in mediation and still felt very resentful towards him. Interestingly, this man had been allowed to read a letter describing the hurt the offender had caused to those present in court; apparently, this had not sufficed for him to leave the offence behind him.

The four victims discussed so far explicitly linked mediation to recovery, but other victims' stories too show that they had been better able to recover from their victimisation experience because of having participated in mediation. For example, two victims testified that it had been very helpful for them to be able to put a face to the offender, to physically see him. Yet one other victim's main reason for not participating in direct mediation or attending court was exactly that she did not want to become acquainted with the offenders' faces.

"Ik weet nu ook al wat ik daar toen aan gehad heb, het feit van bijvoorbeeld dat hij niet gemaskerd was, dat klinkt raar maar dat was wel wat." (Female victim of rape (respondent 38), participant)

"Ik heb zijn gezicht gezien, ik weet wie het is, ik heb hem ergens meegemaakt dus ik kan het denk ik makkelijker plaatsen dan andere mensen. Ik denk dat het een interessant initiatief is, zeker voor mensen die er een gezicht op willen plakken." (Female victim of intentional assault and battery (respondent 1), non-participant)

Three victims explained that after the mediation procedure was finished, they had felt like they could give the offence a place in their lives and minds and leave it behind them. Participating in mediation had allowed them to find closure. Closing the case on an emotional level followed from releasing

feelings of guilt after mediation and from having received answers to questions that had been puzzling the victim. A victim whose offender had not turned up at the meeting said that it would probably have been easier for him to leave the offence behind him had the mediation taken place.

"Een heel grote opluchting, want dat is dan een hoofdstuk dat ik kan afsluiten." (Female victim of intentional assault and battery (respondent 32), participant)

"Je kunt dat precies beter afsluiten, die episode, en er een beter gevoel aan overhouden ook zelf." (Male victim of theft (respondent 37), non-participant)

The above finding suggests that mediation and court to some victims are separate things, which is puzzling in light of the finding, reported in the previous chapter, that they do attach importance to the judge acknowledging the mediation agreement and the effort taken by the victim to participate in a suchlike problem-solving process. But some victims feel that their 'job' is finished and that it is now up to the authorities to draw the case to a close with an appropriate disposition. They have no further say in this and as said in general have no need to have a say in it either.

"Die bemiddeling is voor mij iets geweest om iets af te ronden en dat stond voor een stuk los van wat er op die rechtbank gebeurt. (…) Je hebt gedaan wat je moet doen, en nu zit hij in handen van het systeem, en dat is uw verantwoordelijkheid niet meer." (Mother of female victim of sexual abuse (respondent 50), participant)

"Pour moi ça se termine, et il y a encore juste la justice pour le pénal." (Male victim of intentional assault and battery (respondent 3), participant)

I should mention that one victim when asked whether the mediation experience had helped her to emotionally recover from the facts, answered that it had not. She thought that the fact that the mediator was a man may have been the reason for mediation not having helped her to overcome what happened, which may be explained by the fact that she was a victim of sexual violence. She did during the interview praise the fact that she had found in the mediator someone who listened to her story and offered some psychological support. But in the end, she pointed out, to recover from victimisation more intensive and frequent support is needed than occasional contact with a mediator.

§1.2.2. Victim safety

The analysis of the interview fragments relating to the positive aspects of mediation revealed a second main topic, which is victim safety. Mediation in several ways offers victims protective conditions, both on a physical level and on an emotional level. The first level relates simply to the

fact that victims feel **protected from physical violence** from the offender when meeting him in the presence of a third party.

"En ik dacht, ik aanzag (bemiddelaar) dan als iemand van het gerecht en ik dacht als die erbij zit zal de dader zeker niks durven doen. Zo." (Female victim of intentional assault and battery (respondent 32), participant)

The emotional level is much broader. Throughout the interviews several manners in which participation in mediation contributes to **emotional safety** were found. These relate both to the manner in which *the procedure of mediation in itself* provides for emotional safety and to how having participated in mediation *influences feelings of insecurity and fear of crime*.

First I will delineate how victims feel protected *throughout* mediation. A first manner in which mediation provides for an emotionally safe environment concerns the actual meeting between victim and offender. Victims trust that the mediator will protect them from offenders who become emotionally oppressive or intimidating.

A second manner in which victim safety is guaranteed on an emotional level is that mediation allows victims to communicate to or with the offender through the mediator, that is, without having to meet the offender personally. This is a secure manner of communication, both because a physical and an emotional confrontation can be avoided. There was however one person who believed that communication from the victim to the offender should be direct for the messages to truly have an impact on the offender.

"Als er nu iets was met de kinderen dan kon dat via (bemiddelaar) wel doorgegeven worden, dat was wel belangrijk." (Female victim of rape (respondent 38), participant)

Third, recall that some victims' reason to participate in mediation was, at least in part, to avoid having to go to court, which is stressful and demanding. This is yet another manner in which mediation can contribute to feeling secure and protected. Mediation allows victims who do not wish to attend the trial to still be involved in the criminal proceedings and to have their voice heard.

"Dan hadden ze die stress van de rechtbank niet moeten meemaken." (Father of male victims of intentional assault and battery (respondent 6), non-participant)

"En dan was ik ook content dat ik dan die brief kreeg van de procureur van kijk er bestaat een bemiddeling, want daar had ik nog nooit van gehoord, want je hebt in uw kop van oeioei ik moet een advocaat pakken en wie en wat en wat gaat dat kosten." (Female victim of intentional assault and battery (respondent 32), participant)

Fourth, mediation physically takes place in a familiar and protective environment. Here I refer to something that was said both by victims and mediators. Mediators often visit litigants at home, where people can sit comfortably in their own sofa in a familiar and reassuring environment: *"En natuurlijk, wij komen aan huis, zet u in de zetel, op 't gemak en comfortabel"*. In case a face-to-face meeting takes place, the setting is intimate and personal and therefore much more reassuring than a courtroom. The interviews show that simple things, like the mediator offering coffee and everyone sitting at a table in an everyday room, set people at ease and contribute to the protective atmosphere.

With a view to victims feeling comfortable during the meeting, I may refer to victims of offenders who are held in pre-trial detention: they may have to meet the offender in prison, which according to the one victim who had found herself in such a situation is quite intimidating. On the other hand, she did say that it had had no influence on the conversation.

"Misschien heb je dan wel een advocaat die het dan nog eens gaat uitleggen, maar dan denk ik toch dat je veel zenuwachtiger bent dan nu met (bemiddelaar) hier in een huiselijke sfeer." (Female victim of intentional assault and battery (respondent 32), participant)

"Dat was in een heel intieme sfeer om het zo te zeggen, direct (bemiddelaar) van koffie en zo…" (Female victim of intentional assault and battery (respondent 32), participant)

Fifth, victims are more at ease during contacts with mediators than with judges. Mediators are praised for being normal, simple and accessible, which is a big contrast with people's images of judges. Even mediators' clothing was addressed during two interviews. Though the quote below suggests that it is good for mediators to dress casually, in one case a mediator's overly casual look had made an unprofessional, amateurish impression on the victim ("als hij au sérieux wil genomen worden, mag hij niet zo alternatief gekleed gaan").

"Weet je, als je nooit iets met het gerecht te maken hebt dan denk je dat dat allemaal stijve heren zijn, maar (bemiddelaar) is dat helemaal niet. Dat is een gewone, simpele, toffe gast, dus. Die kan u ook op uw gemak stellen. En dat is beter zo dan dat er zo'n stijve burger voor u zit want dan ben je nog zenuwachtiger he." (Female victim of intentional assault and battery (respondent 32), participant)

One final manner in which mediation may contribute to victims feeling safe throughout the process of mediation is through its principle of voluntariness. Being invited to participate as said may bring with it some distress, because many considerations cross people's minds, but in the end the fact that one is free to make a decision oneself is highly valued.

"(…) het positieve daaraan is dat je het zelf in handen bent. Het wordt u totaal niet opgedrongen." (Mother of female victim of sexual abuse (respondent 50), participant)

The above examples relate to the *procedure* of mediation offering victims a kind of emotional shelter from which they have the opportunity to participate in the criminal proceedings while at the same time seeking protection from the distressing facets of a criminal trial. But feelings of safety also *result from* participation in mediation. Some of the participating victims had experienced that their fear of revictimisation by the same offender had declined as a result of having participated in mediation. One is e.g. not afraid anymore of crossing the offender in the street or is less fearful that the offender may repeat his offence on the victim or try to contact the victim later on. One victim testified that during the meeting with the offender she had finally realised that he had been manipulating her for a long time and realised what kind of person he actually is. This adds to victim safety in the sense that she was now protected from further manipulation and possibly victimisation by this person.

"Ik had dat toen precies nodig van het is genoeg geweest en ik ga er mijn leven niet door laten vergallen van 'wat als ik hem tegenkom'. En nu kan ik hem weer tegenkomen. Ik ben gesterkt. Dat je normaal kunt doen, zonder dat ik dan begin te flippen." (Female victim of intentional assault and battery (respondent 32), participant)

One could wonder if participation in mediation also influences fear of crime in general; Strang (2002) for example found that it does. No more than one victim talked about his level of fear of crime after mediation, but contrary to expectations on the basis of previous studies, his fear of crime had *increased*. This was because meeting his offenders in mediation had made him realise that many offenders are people like anyone else. He had had to adjust his image of 'a criminal'. Whereas before he thought criminals are physically discernable from law abiding citizens (he referred to skinheads and people with tattoos), he now had seen that his attackers were three ordinary young students. He explained that he was now much more aware of danger and much more alert in the streets.

"(…) je komt binnen en merkt dat dat eigenlijk maar gewone jongens zijn eigenlijk. (…) Dat is vooral voor uzelf, als je gewoon buiten loopt en je kijkt rond u (…). Je merkt nu bij uw eigen dat je meer op uw hoede bent." (Male victim of violent robbery (respondent 49), participant)

§1.2.3. Acknowledgement

The interviews revealed a third manner in which mediation may strengthen those who have fallen victim to a crime and face an encounter with the criminal justice system. Under the heading acknowledgement I grouped all positive aspects of mediation that contribute to victims feeling

recognised. Recognition may have different sources (the mediator, the offender, the judge) and may be experienced at different stages of the mediation process (the offer, the procedure itself, or during the trial). I will order the paragraphs below in the chronological order of these different stages.

First of all, being *offered* mediation may convey upon victims a sense of acknowledgement. One person described how the language used in the letters she received from the prosecutor made her feel heard. One could also imagine that the mere fact that someone approaches them pro-actively and invites them to play a role in the process of handling the case may communicate acknowledgement, yet no examples of victims explicitly saying so were found in the sample.

"En op elke brief die ik kreeg van de procureur stond dan naar aanleiding van de feiten en omwille van het feit dat het onder bedreiging was van wapens en het dus ernstiger is… En dat maakt ook dat je u een stukje gehoord voelt." (Female victim of robbery (respondent 47), participant)

Going then to the actual *mediation procedure*, I found that victims' feelings of acknowledgement may be enhanced by leaving the decision on which party the mediator meets first to the victim. It is possible that some people do not want the burden of deciding on something like this, but I found that a number of victims were satisfied that they had had this choice, and that others were dissatisfied about the fact that the mediator had not yet met with the offender when (s)he came to them.

"Want zij komt eerst hier, (…) en dan heeft zij een heel stuk achtergrond en informatie, dat ze weet welke vragen ze aan die gast gaat stellen. Terwijl als je hem gewoon vragen stelt zonder iets te weten, denk ik dat dat anders is." ((Wife of) male victim of intentional assault and battery (respondent 12), non-participant)

"Hij had aan de telefoon gevraagd wat wensen jullie, dat ik eerst contact heb met jullie of eerst met de dieven. En wij hebben gezegd het is misschien interessant dat je eerst met de dieven, dat je iets meer weet van die dieven, dan met ons." (Male victim of burglary and theft (respondent 51), non-participant)

Acknowledgement may furthermore proceed from having been able to tell one's story to and being listened to by a mediator or by the offender in a face-to-face meeting. An offender expressing understanding for the victim's story is priceless, so to speak.

"Er was ene die zonder dat ik daarover begonnen was daar zelf over begon, dat hij zich had ingebeeld dat dat bij hen gebeurde en oei oei oei. (…) Dat is dan wel, ja, tof om te weten dat die daar wel mee inzit." (Male victim of violent robbery (respondent 49), participant)

One of the participating victims had been attacked by both minors and adults and at the time of the first interview had already participated in a restorative conference organised with the young offender. During this interview she repeatedly stressed how important it had been to her that the young offender, his family and his lawyer had not taken her presence for granted. They had thanked her extensively for coming. Such tokens of appreciation are highly valued.

"(…) en iedereen was ook, allez, hij en zijn familie, de advocaat, benadrukten ook allemaal dat ze het apprecieerden dat we dat wilden doen; niemand vond het evident dat we dat deden, niemand vond dat vanzelfsprekend. (…) Zowel hij als zijn familie als de advocaten hebben ook wel duidelijk gezegd bedankt om te komen, voor ons is dat belangrijk." (Male victim of violent robbery (respondent 49), participant)

This particular victim compared the role of the victim in mediation and conferencing to conclude that the victim is more actively involved in the consequence that is given to the offence in a conference than in mediation, because the role of the judge is different. Youth judges are much more bound by the agreement between the offender and the victim than correctional judges, which the victim thought is better. Feeling acknowledged therefore seems to depend also on what the judge does with the agreement reached in mediation. Judges can enhance feelings of acknowledgement by mentioning the fact that parties have participated in mediation explicitly in court and spending attention to the parties' efforts in the judgement. This finding corroborates with what was said in the previous chapter about acceptance of the judgement. This means that the experience of mediation may give rise to feelings of acknowledgment during the criminal proceedings that take place *after mediation*. One participant expressed dissatisfaction about the fact that the judge had referred to mediation only in the very last sentence of her judgement.

"Dat hij *(de dader)* dat dan bekijkt met zijn familie om dat dan uit te werken en een voorstel doet en daarmee naar ons komt, en dan gaat dat voorstel naar de jeugdrechter en kan die dat bekrachtigen of nog wijzigen. Waardoor je eigenlijk een stuk actiever betrokken bent in het gevolg dat eraan wordt gegeven. Terwijl bij de meerderjarigen het eerder een gesprek is, een bemiddeling waarin je wel de kans hebt om nog vragen te stellen en te zeggen wat het voor u betekend heeft, en je ook wel kunt vertellen wat je belangrijk vindt, maar dat de zaak sowieso nog naar de rechter gaat." (Female victim of robbery (respondent 47), participant)

"Pour le juge, la médiation, c'est des gens qui ont fait du travail pour elle. Si les gens sont d'accord avec la médiation, elle le met dans le jugement, elle gagne du temps. (…) Mais je crois qu'elle n'a pas donnée assez d'importance à la médiation. (…) Elle n'a pratiquement pas parlée de la médiation. Pour moi c'est du travail qui est fait pour lui, elle ne doit plus trancher et discuter, on le fait gagner du temps." (Male victim of intentional assault and battery (respondent 3), participant)

§1.2.4. An opportunity to tell one's story

Three victims praised the fact that mediation had allowed them to tell their story to someone, *i.e.* the mediator. Someone comes to them and takes time to listen to their story.

"Die bemiddeling dat doe ik omdat ik eens echt met iemand wil kunnen praten over wat er gebeurd is, en mijn moeder is dood, en broers of zussen heb ik niet. Je kunt dat wel tegen een vriendin zeggen maar dat is niet hetzelfde. Die geven u gelijk, zo is dat. Dus ik had nood om met iemand te praten maar niet om dat overal te gaan rondbazuinen." (Female victim of partner violence (respondent 16), participant)

"Ik vind dat op zich wel interessant, om te weten dat dat bestaat, hoewel het bij ons dan niet is doorgegaan. In dit geval was dat *(het verkennend gesprek met de bemiddelaar)* gewoon een moment dat ik mijn verhaal heb kunnen doen op een moment dat ik nog met weinig mensen contact had gehad, want ik zat nog altijd thuis." (Female victim of intentional assault and battery (respondent 1), non-participant)

Four victims mentioned how mediation had allowed them to tell *the offender* what the crime had meant to them and how they had experienced it.

"Ik heb zeker de kans gehad om te vertellen hoe ik mij daarbij gevoeld heb en wat dat voor mij betekend heeft en waar ik wel of niet kwaad over ben geweest." (Female victim of robbery (respondent 47), participant)

"Ik heb ook wel kunnen vertellen wat het voor mij geweest was en ook voor hem, hij was er ook niet goed van. Ik heb verteld verteld verteld." (Female victim of intentional assault and battery (respondent 32), participant)

§1.2.5. More certainty of compensation

Two victims expressed satisfaction with mediation because participating in mediation provides greater certainty that one will receive compensation for damages. Both expressed the feeling that if the case goes to court, there is no certainty of receiving an amount that is satisfactory; through mediation, they reached an agreement on an amount that they were satisfied with. One of these victims afterwards did doubt whether she had not been too lenient and should have asked more, but she took comfort in the fact that at least she had the certainty that she had received *something*.

"Il vaut mieux qu'on fasse un mauvais arrangement qu'un bon procès parce que on ne sait pas comment ça finit. (...) on ne sait pas ce qui est au bout." (Male victim of intentional assault and battery (respondent 3), participant)

"Ik was misschien te rap content, heb ik achteraf nog gedacht. Maar dat had voor hetzelfde geld niks geweest." (Female victim of intentional assault and battery (respondent 32), participant)

§1.3. Offenders specifically

§1.3.1. Respectful dialogue

Those offenders participating in the second wave interviews that were satisfied about participation in mediation were in particular those who had met the victim in person, and oftentimes their answer to the question what it was exactly about mediation that they found valuable included that it had been a good experience to talk to the victim in an open, respectful and peaceful atmosphere.

"En, ja, dat verliep eigenlijk heel goed, veel beter dan verwacht eigenlijk. Die man die was eigenlijk heel open tegenover ons, heel vriendelijk." (Male offender, violent robbery (respondent 48), participant)

The fact that none of the offenders who met the victim in a face-to-face meeting had a bad experience with mediation to a large degree can be attributed to the fact that none of them had been faced with an angry, irritated or aggressive victim. Quite to the contrary, they were pleasantly surprised about their victims' behaviour. Before the actual meeting offenders were often worried about how their victims would behave, what the victims would say, if they would swear or scold or be aggressive, as the first quote below shows. But those who had met the victim said that these had had a friendly and open attitude.

"De dag voordien ben ik daar heel de dag mee bezig geweest, euhm, ik heb praktisch die nacht niet geslapen omdat je weet dat dat gaat gebeuren, je bent bang in eerste instantie op basis van geconfronteerd te worden met [het slachtoffer], en je bent bang hoe die reactie gaat zijn, of die mij gaat uitkafferen of weet ik allemaal." (Male offender, sexual abuse (respondent 53), participant)

"Dat we op zo'n menselijke manier dat gesprek hebben kunnen doen." (Male offender, sexual abuse (respondent 53), participant)

The atmosphere in mediation was contrasted to the one in court: whereas the second was described as a place where parties oppose each other and fight, mediation was perceived as a cooperative undertaking.

"En dan, dat klikte, allez, klikte zal ik nu niet zeggen maar we hebben er nog goed mee kunnen praten en kunnen uitleggen. (…) De rechtbank is vechten tegenover elkaar zogezegd, via een rechter dan. Maar hier was het gewoon samen tot een beslissing komen over wat het beste is voor allebei. Dat is veel beter dan de rechtbank." (Male offender, violent robbery (respondent 48), participant)

According to several offenders, the presence of a third party contributes to the good atmosphere of a mediation meeting, for several reasons. Five offenders referred to the fact that physical safety is ensured when a mediator is present in a meeting between a victim and offender. Offenders seem just as afraid for physical aggression by the victim as victims are for aggression by the offender.

"Moesten ze mij vragen via via om die mensen te ontmoeten, misschien dan, als iemand aanwezig is iedere keer, maar echt persoonlijk alleen, dat vind ik toch gevaarlijk." (Male offender, fraud (respondent 33), participant)

It was furthermore said that in the presence of a third party all would be more likely to be honest and to speak in all openness. One man said that it is good to be accompanied by a third party who can point the parties to alternative perspectives in case each of them holds on firmly to their own point of view. Another advantage of having a neutral party present according to one offender is that the claim that he has repaired the relationship with his victim will be more credible to the judicial authorities if a mediator has witnessed this, because the criminal authorities believe him to be very manipulative based on his past behaviour (he was a recidivist offender).

"Dan blijft het eerlijk en dan worden de dingen daar gezegd zoals het gebeurd is en ja, voila." (Male offender, theft (respondent 35), non-participant)

"Als we het oneens zijn over iets en we geraken het niet eens en iedereen blijft bij zijn eigen standpunt, als je daar dan een onafhankelijke persoon bij zitten hebt, die kan soms de andere zeggen 'je moet eens zo of zo denken' en dat kan wel helpen." (Male offender, partner violence (respondent 17), participant)

§1.3.2. Repairing relationships

A second theme that I discerned in the list of positive effects of having participated in mediation that offenders mentioned is that it has allowed normalising the relationship with the victim or repairing one's relationship with one's close ones.

An offender who had had a close relationship with the mother of his victim first and foremost was satisfied because during the face-to-face meeting they had been able to say things that had been left unspoken between them. Also, meeting her in mediation had been helpful in order to ask her to be discrete about what happened and not to point him with the finger in case they would meet each other on the street some day in the presence of others. Finally, he felt confident that thanks to the fact that they had met through mediation, the victim and he would be able to exchange polite greetings in case of accidental contact.

"Ik denk dat we daar allebei wel het nodige aan gehad hebben om dat te doen want wij hebben eigenlijk ook geen afscheid van elkaar kunnen nemen. Ik werd opgepakt en ik heb haar niet meer gezien. Dus euhm… (…) dat we eigenlijk tegen mekaar toch hebben kunnen zeggen wat we moesten zeggen." (Male offender, sexual abuse (respondent 53), participant)

"Maar ik heb wel aan Y. *(het slachtoffer)* gevraagd van kijk, wanneer ik vrijkom, en ik loop hier over de markt in (stad) en ik zie u, dat we mekaar een hand kunnen geven en kunnen zeggen dag X. *(naam respondent)* en dag Y." (Male offender, sexual abuse (respondent 53), participant)

Another offender said that one of the good things about mediation is that it allows repairing the damage done to one's family and partner. Showing responsibility for one's actions conveys upon these people a good impression.

"De schade zal een beetje hersteld zijn, naar familie toe, naar mijn vriendin toe." (Male offender, theft (respondent 14), participant)

§1.3.3. Unbiased approach

Two offenders appreciated mediation because the mediators unlike the other professionals they had encountered did not judge them. Encounters with the criminal justice authorities as said before often leave offenders feeling marked by a stamp of 'gangster, big criminal'. They feel judged by everyone they meet on their way through the criminal justice chain (remember that offenders were not particularly satisfied about police officers' impartiality nor about how they were treated by investigating judges). Mediators were regarded by these two offenders as people who they could finally talk to and tell their story to without being judged. They said that mediators look at the person behind the criminal as they sincerely listen to the offender and try to understand the circumstances that brought the person to commit a crime. Mediators by doing so see that the person is not 'a criminal' but in fact just a normal person who made a mistake, and convey this message upon the offender.

"Anders heb je toch een beetje het gevoel van, hij heeft dan ook een nacht vastgezeten, je bent precies een gangster, je krijgt een stempel, en dan is er toch iemand die luistert, en dan heb je toch minder dat gevoel van 'je hebt dat gedaan, je behoort bij de criminelen'. Allez ja, je krijgt zo de stempel van crimineel, en dan is er toch iemand die luistert, je bent niet meer zo'n nummer, en ze stoppen u niet meer in die categorietjes." ((Wife of) male offender, violent theft and threat of arson (respondent 24), non-participant)

§1.4. Summary, discussion and concluding considerations

The above overview gives an impression of the positive aspects of victim-offender mediation as perceived by the participants to the current study. An aspect of mediation that *both victims and offenders* praised is the fact that through mediators they received a lot of information. Furthermore, litigants who participated in mediation reported being less nervous to attend the trial and praised the fact that the trial may take less time and financial resources in case an agreement between the parties was reached through mediation. They also liked the fact that through mediation one can participate in fact-finding.

The analysis of *victim* interviews demonstrated that mediation had been helpful to victims in five ways. First, it advances victim recovery and healing. Second, it allows regaining a sense of safety and participating in the criminal proceedings in protective circumstances. Third, mediation contributes to victim acknowledgement in several ways. Fourth, mediation allows for one's story to be heard both by the offender and an impartial other. Fifth, mediation allows making an arrangement about compensation and offers more certainty that the outcome will be satisfactory. *Offenders* were satisfied about their experience with mediation, first, because they had been able to talk to the victim serenely and in a respectful way, second, because they had been able to repair relationships with their victim or with their own close ones, and, third, because they were approached by mediators in a neutral and non-judgemental way. Below I will discuss how these add to the state of the art.

§1.4.1. Major source of information

Both the current study and previous ones have shown the importance to litigants of receiving information about one's case, though prior studies have chiefly focused on victims (e.g. Wemmers, 1995, 1997; Hoyle *et al.*, 1998). A first manner in which having participated in mediation may impact upon feelings of fairness is through the fact that litigants who participate in mediation often are much better informed about the criminal proceedings and about their legal rights than those who do not. Previous research (Wemmers, 1995, 1999) suggests that victims who want and receive information from the police or prosecution are more likely to find that they were treated fairly and hold more favourable attitudes towards these actors.

As the mediators said, the fact that people value mediation so much because of the provision of information points to a shortcoming of the criminal justice system, which severely fails at supplying victims and offenders with the information they need. It also points to shortcomings of lawyers and of victim and offender support services. Providing litigants with information about criminal proceedings in fact is a task of these services, but it seems that people do not find their way to these services. Someone believed that this may be explained by the fact that the offer for mediation is an

active one whereas the other services one needs to go to on one's own account.[55] One mediator said that another reason could be that victim supporters possibly focus more on the emotional consequences of victimisation than on informing victims about legal possibilities. Moreover, from the interviews I conclude that lawyers are not major sources of information either; communication with one's lawyer often is limited to the exchange of what is strictly necessary. Mediators thus often fill the gaps left by the criminal justice system and its supporting services.

The fact that mediation was praised as a source of information is not surprising in light of the fact that the mediator often[56] is the first person to contact victims and offenders about their case after some months of silence. Litigants receive some information from police officers, some more than others, but once the police hands over the file to the public prosecutor, so victims testified, nothing is heard from the authorities for months. Offenders may be somewhat better informed because they have been brought before an examining judge and thus are better aware of how serious the case is deemed by the judicial authorities, but they too complained about those months during which one hears nothing at all about the case. As mediators are the first persons that these victims and offenders encounter after those months of silence, and they are at least at the start often perceived as being sent by the public prosecutor (as the letter offering mediation is sent by the prosecutor's office), they are the ones upon whom litigants bestow all the questions that have accumulated in those months. Furthermore, mediators use everyday language, whereas the information people receive from the criminal justice system often is hard to understand because of the jargon used. The following quote by a mediator bundles these two aspects: *"Maar ik vind dat eigenlijk niet onlogisch, wij zijn de eersten die ze zien dus wat doen ze? De vragen gaan op dat moment naar boven komen en gaan ze stellen. We werken ook heel laagdrempelig, we spreken op hun niveau, dus het is logisch."*

§1.4.2. Diffusing tensions with respect to attending the trial

Decreases in stress about seeing the offender in court and going to court as a result of participation in mediation have also been reported by Van Camp (2011). The author interviewed victims who participated in a restorative programme in Belgium or Canada and found that participation in these programmes had been helpful for these victims because it had allowed them to prepare emotionally

[55] I should add that this statement reflects a personal opinion, because the police *do* actively refer some categories of victims to victim support services, at least in theory. They are legally obliged to minimally refer victims who have seen their offender during the offence and victims of breaking and entering to victim support services. Other victims too should be referred when individual police officers deem that it is necessary in a specific case (art. 9 §2 Samenwerkingsakoord van 7 april 1998 tussen de staat en de Vlaamse Gemeenschap inzake slachtofferzorg, *B.S.* 13 juli 1999).

[56] Except if victims have been in touch with victim support services.

and mentally for the trial. This was, first, because they had a better idea of what to expect of a trial, second, because they already knew the offender's motives and thus were protected from hearing about important details for the first time in the courtroom, and, third, because the air between them and the offender had been cleared and the relationship restored. The findings of Van Camp (2011) are most valuable with a view to this issue, and the findings of the current study add to these findings because the current study also looked into offenders' point of view. The fact that tensions are diffused before the case goes to trial adds to litigants' well-being as they are less nervous and afraid, which in turn facilitates active participation.

§1.4.3. Victim recovery

Findings of previous studies (e.g. Strang, 2002; Umbreit *et al.*, 2004; Wemmers and Cyr, 2005; Zebel, forthcoming) on the impact of mediation on victim healing and recovery back up the current study's finding of a positive effect of participation in mediation on victim recovery and well-being. Victims reported feeling less fearful towards the offender, having been able to release negative feelings towards the offender and feelings of guilt, having been able to calm down the chaos in one's head and having been able to put the offence behind them. But the findings do add to the literature two things important with a view to evaluating the degree to which restorative interventions may be beneficial to victim recovery that have not received sufficient attention so far.

First, the positive effects on victim recovery did not only result from the confrontation with the offender but also from the preparatory talks with the mediator. The mere fact that someone (*i.e.* the mediator) has listened to their story and has been able to answer a few questions may contribute to victims' well-being. Mediation in other words can also be highly appreciated even when the other party drops out and/or no agreement can be achieved. Yet this does not apply to all victims: there were two who clearly stated that if it had not been possible to arrange for compensation through mediation the case to them would not have been closed at all. To some victims, then, recovery may result from the fact that one has been able to tell one's story, whereas others need an arrangement on material compensation before being able to leave things behind them. This is important information with a view to the process-based/outcome-based discussion within the restorative justice movement.

Second, the results suggest that the degree to which a restorative intervention positively affects victim recovery may depend on the intensity and frequency of victims' contact with the mediator. One victim as said indicated that her contacts with the mediator had been too sporadic to have a real impact upon her psychological well-being. In one of the focus groups too mediators when discussing this issue said that to a few participants mediation may be a life event, but that to the vast majority of participants the mediator's intervention is limited to some brief exchanges of information: *'Je bent*

maar zo belangrijk als zij dat op dat moment vinden, en soms is dat maar een schaderegeling en is het voorbij. Ik denk dat we niet moeten overschatten, het gros van wat wij doen, dat dat nadien niet meer zo aanwezig is in de mensen hun leven. Dat is op zich ook niet slecht, want het kan op dat moment wel zinvol geweest zijn." This is an important finding that I believe has too often been overlooked by restorative scholars, with the notable exception of Kathleen Daly. In several papers (2003b, 2005), she has suggested that there are limits to the degree to which restorative interventions may positively affect victim recovery. As Daly (2008: 142) states, "victims who are affected negatively and deeply by crime need more than RJ (or court) to recover from their victimization". The current study's results are optimistic, but also confirm this concern.

§1.4.4. Victim safety

Its impact on victims' feelings of safety is a second manner in which participating in mediation influences how victims go through and recover from a confrontation with the criminal justice system. The findings confirm previous research (Umbreit, 1992; Strang, 2002) on the influence of participation in mediation on fear of (being revictimised by) the offender. But the results of the current study also add to the state of the art.

First, the findings lead to reflection on the procedural justice concept of 'decision control'. Since Thibaut and Walker's control theory gradually got overshadowed by non-instrumental models of procedural justice, the concept of control has not been very prominent in procedural justice literature and research. I suggest that the term decision control should be released of its association with decision control on the outcome of the procedure, because decision control on such things as participating in mediation *is* fundamental to people's experiences, especially victims'. Being able to choose oneself whether to speak in court is another example, or being able to choose whether one wants to meet the mediator first, before (s)he visits the offender, or prefers the mediator to first talk to the offender. Winkel *et al.* (1991) too have written about this, referring to the example of letting victims attacked on the street decide when to get into the police car to drive to the police station, and not to *instruct* them that it is time to go and that they should get in. Van Camp (2011) found the victims participating in her study too to be extremely appreciative of the fact that the decision on whether to take part in mediation is entirely theirs. It seems, then, that at several moments during a criminal procedure decision control is more important than procedural justice scholars tends to proclaim, as long as decision control is not interpreted as control over the (trial) outcome.

Second, the finding of increased fear of crime as a result of mediation adds to the writings of Pemberton *et al.* (2008). These authors assert that meeting and talking to the offender may be beneficial; it may lead victims to move from the overgeneralised perception that the world is a

dangerous place to the realisation that the offender is not an evil person and is truly sorry. In this case, fear of revictimisation may decrease. Yet in case the meeting between victim and offender leads the victim to believe that the offender is a bad person, if during the meeting the offender attributes the crime to the victim's behaviour at the time of the offence or if the offender's stated motivation confirms a victim's fear, the authors point out, fear of crime may increase rather than decrease. The current study's findings add to this list the case where stereotypical images of offenders are undone and victims realise that anyone they pass on the street is capable of committing an offence.

§1.4.5. Acknowledgement

The results described above suggest that victims derive acknowledgement from the mediation procedure itself and from the fact that the judge mentions the mediation agreement in the judgement and brings it up in court.

Signs of acknowledgement during mediation may come from the mediator or offender expressing understanding for the victim's story and hurt. This finding corroborates with Van Camp's (2011) findings on how participation in a restorative intervention may contribute to victims feeling acknowledged. The finding that there is a need for the communication between the parties to be acknowledged by the judge reminds of Braithwaite and Parker's (1999) theorising on how restorative interventions can be "bridge-building institutions" (Braithwaite, 2007: 149) that allow 'the justice of the people' to bubble up into 'the justice of the law'. Apparently, this is indeed what litigants wish.

In Belgium, judges are legally obliged *to mention the presence of a mediation agreement in the judgement*. As for this obligation, Loch's (2009) study is revealing. Lochs examined 157 judgements delivered in four Flemish judicial districts during the period 2006 to 2008 to check whether judges comply with this obligation. Results showed significant differences between the four judicial districts (percentages varied between 5% and 55%), but overall only forty percent of the judgements examined contained an explicit or implicit reference to the mediation agreement. Subsequent interviews showed that magistrates are hardly aware that they are legally obliged to mention the presence of a mediation agreement in the judgement.

One of the mediators during the focus groups said that one should not assume that the fact that judges do not bring up the mediation agreement during the trial or do not mention it in the judgement means that they do not take it into account or acknowledge its importance. Yet this may be exactly what is assumed by victims and offenders faced with a judge leaving their mediation efforts unmentioned in court and/or in the judgement. If the judge does not bring up the issue of mediation in court or mention it in the judgement, litigants assume that it has played no role, while the results of the current study show that they do feel a need for acknowledgement by the judge for

their efforts. In this respect, the judges interviewed by Lochs (N = 8) all declared that mediation is an element that is taken into account when deciding on the sanction and that speaks in favour of the offender, to the degree that it may lead them to impose a more lenient sanction than they would otherwise do or to opt for a sanction modality such as suspension of the sanction instead of an effective sanction, but that they do not write down every single consideration that played a role when deciding on the sanction in the judgement because that would take too much time.

Given the finding that victim acknowledgement proceeds in part from *judges mentioning in court that they have read the mediation agreement* one could ask the question whether judges should more actively bring up mediation during the trial. Lochs' (2009) research into the way magistrates perceive mediation agreements shows that judges do not consider it their task to bring up the mediation in court – that is considered the task of the parties. Also, they said, the courtroom is not the appropriate place to 'redo' the mediation. But one could raise the argument that judges in civil law countries such as Belgium traditionally actively engage in fact-finding and that it would therefore be logical that they would also actively talk to the parties about mediation, all the more since that would convey upon those parties a message of acknowledgement and thus – in procedural justice terms – would contribute to positive perceptions of standing.

§1.4.6. Respectful dialogue

The overview of reasons for participating in mediation shows that only a few offenders *before* mediation explained their readiness to participate in mediation by the fact that they wanted to talk to the victim – recall that outcome-related reasons dominated. Yet one can see that this aspect of mediation is exactly what makes many of them enthusiastic about it when evaluating the experience. Possibly, the reason for the difference is that they did not expect that they would be able to have a respectful conversation with the victim. As Umbreit *et al.* (2004) too report, offenders were generally surprised about the fact that the meeting with the victim was a positive experience. They commonly expected victims to be unkind, which may explain why they do not participate in mediation for the reason that they believe they will be able to have a good talk with the victim.

The question at this point is: how does this particular positive feature of mediation impact upon how offenders experience the handling of their case by the criminal justice system? What is it exactly that makes them value the opportunity for a personal conversation with their victim to such a degree? This finding shows that a feeling that justice is done proceeds not simply from a disposition that was imposed top-down; more seems to be needed in order to truly experience that justice is done, and before one can go on to close the matter on an emotional level. The results are illustrative of restorative justice's understanding of justice, *i.e.* that justice should not be conceptualised as a

given, something that is imposed top-down, but as something that is created by the parties to a conflict. Justice is not something static but dynamic, not merely the application of an abstract rule to a case but the active construction of justice (Foqué and 't Hart, 1990; Walgrave, 2008a). It is these "horizontal, humanising claims of restorative justice" (Foqué, 2005: 184) that the finding relates to.

§1.4.7. Repairing relationships

The findings presented here suggest that part of the reason why people who participated in mediation are more satisfied about the experience of seeing justice done than those who did not, may be that mediation allows repairing valuable relationships with the victim or the victims' family, and one's own close ones. The latter is a positive result of mediation that I believe has not figured prominently in restorative justice literature so far. As for the interpersonal relationship with the victim, it showed that it is not necessary that the relationship is reconstructed to be the same as it was before the offence; the fact that the relationship is no longer dominated by hatred or anger but again marked by mutual respect may be sufficient. As such, participation in mediation may contribute to feelings of positive social standing.

§1.4.8. Concluding considerations

I conclude this part on the positive aspects of mediation with two final remarks. First, comparing the reasons for people to participate in mediation and the elements determining their evaluation of the programme reveals that whereas *offenders* often choose to participate in mediation for outcome-related reasons, the grounds on which they evaluate mediation are not those ones. In fact none of the offenders' answers to the question how they evaluated their experience with mediation literally included that they valued it because it had had an influence on the outcome of the trial. From the previous chapter of the dissertation we know that they do attach importance to judges taking into account that they have participated in mediation, but in their evaluations of the mediation programme this element did not figure. As for *victims*, their reasons for participation revolved around their well-being and recovering from the facts and it turns out that their satisfaction about mediation indeed derives to a great degree from the effect that it has had on their feelings of well-being.

Second, near the end of the second wave interviews participants were asked which advice they would give to people who would become involved in a criminal trial. The answers to this question provide further proof of participants' satisfaction with the mediation experience: 'to participate in mediation' was by far the most frequent answer to the question. Six victims and one offender said that they would especially advise other people to check whether it would be possible for them to take part in victim-offender mediation. To the question what had been the most positive thing about

one's experience with the handling of a criminal case, two victims responded that that had been them being involved in victim-offender mediation. Yet in a number of ways being involved in mediation may also lead to frustration or distress. These will be spelled out in the next section.

§2. The downsides of mediation

§2.1. Victims and offenders

§2.1.1. The confidentiality of mediation

The confidentiality of mediation is a principle that is included in all international legislation on mediation. The Belgian law on mediation prescribes strict confidentiality; the contents of the mediation cannot be communicated to the court unless all parties agree to it. Two offenders during the post-trial interview denounced the fact that nothing that is said by the parties during a mediation procedure may be passed on to the judicial authorities unless all agree to it. The victims of both offenders had acknowledged the innocence of the offender to the mediator but had eventually refused to sign a mediation agreement confirming this (probably on the advice of their lawyers). The awareness that one's innocence had been confirmed by the victim in an informal way but that this knowledge would not make it to the formal circuit was hard to bear. The fact that people may say one thing to the mediator or during a face-to-face meeting but say another in court was unbearable to the two respondents mentioned here and overshadowed any positive effect of participation. They feared a wrongful conviction and experienced a sense of powerlessness. In case the principle of confidentiality prohibits that the truth about the facts is brought into the open in court, then, it may no longer be supported. One of these two offenders said the following – I quote her extensively:

"Herstelbemiddeling had dan gevraagd om dat eventueel op te maken in een overeenkomst, maar zij moest dat eerst bespreken met haar advocaat en daar gaat nu waarschijnlijk niks van in huis komen. Het is minder positief voor haar dus haar advocaat gaat dat echt niet toelaten. (…) Dus daar sta je zo machteloos tegenover, je weet dat ze dat daar verklaard heeft maar je kunt dat niet bewijzen. (…) In het begin als we naar herstelbemiddeling gingen, zei (bemiddelaar) van, wat er nu gezegd wordt staat los van de rechtszaak, maar moesten er nu dingen gezegd worden die toch eigenlijk heel belangrijk zijn, zijn we wel verplicht dat door te spelen. Maar voor mij is dat álles he, dat papier dat daar ligt waarop zij zegt dat ze weet dat ik achteruit werd getrokken. Maar hij zegt dat dat dus niet gaat, dat hij dat niet kan doen. En toen had ik zoiets van, wat moet er dan nog meer gezegd worden in zo'n herstelbemiddeling dat het dan toch naar de rechter zou gaan?" (Female offender, intentional and unintentional assault and battery (respondent 46), participant)

This respondent during the second interview repeated:

"Ik vind het gewoon nutteloos waar zij mee bezig zijn als dat toch geen invloed kan hebben op de rechtszaak. (…) Dat kan toch niemand zeggen dat dat correct is? Dat is een fout systeem he, dat is een fout systeem, dat is niet juist. Dat had voor mij dag en nacht verschil gemaakt, en ik denk dat er heel veel mensen zijn die in zulke gevallen als de mijne, er zullen nog wel mensen zijn die soortgelijke dingen voorhebben." (Female offender, intentional and unintentional assault and battery (respondent 46), participant)

A third offender considered it incorrect that he was not allowed to mention to the judge that he had participated in mediation because the victim did not want him to. His stance was confirmed by that of a victim who said that judges should not only be informed about offenders' refusal to participate in mediation but should also confront them with this in court and ask why they refused. Keeping in mind the importance that victims attach to the offender being held publicly accountable for a crime, it could be that they also want offenders to be held publicly accountable for the refusal to participate in mediation.

"Zou dat veel uitgehaald hebben op twee jaar te krijgen? Daar gaan ze geen jaar afdoen he omdat je hier slachtofferbemiddeling hebt gedaan, ik bedoel. Natuurlijk, het zijn allemaal wel stappen in de goede richting, misschien dat daar wel ergens rekening mee kon gehouden worden, maar, pff, ik weet het niet." (Male offender, sexual abuse (respondent 53), participant)

"Dan vind ik dat dat misschien ook op de rechtbank voor een stuk, tijdens de eerste zitting misschien aan bod moet komen, ik vind dat de rechter dan moet weten dat er een poging tot bemiddeling is gedaan en dat er van haar *(de dader)* kant geen reactie is gekomen of geen toegeving is gedaan. En stel haar dan op de zitting ook de vraag waarom, en ga dan verder." (Father of male victims of intentional assault and battery (respondent 6), non-participant)

I asked the mediators participating in the focus groups to comment on these findings. They confirmed that they are regularly asked by one of the participants or their lawyer to write a report on their commitment and efforts or even provide them with some kind of certificate that allows them to prove to the judge that the other party refused to participate. The mediators commonly understand people's frustration, but added that every participant is informed of the principle that nothing is communicated to the judge unless all agree at the outset of a mediation procedure, and none of the mediators was in favour of creating more possibilities for communicating to judges about the content of mediations, because that could lead to abuse of mediation: *"Dat is gewoon de essentie van ons bestaan. Als je wilt dat er een vertrouwelijk kader is waarin je dingen kan zeggen, dan staat daar tegenover dat je daar als bemiddelaar niet over kunt communiceren tenzij beide partijen toestemmen"/"Dan zou het meedoen aan herstelbemiddeling nog meer zijn van ik wil mijn gelijk daaruit halen, er voordeel uit halen"*.

The mediators added that even though the law prohibits communicating about what was said in mediation, the current legal framework does allow litigants to mention to the judge that they were willing to participate in mediation but that the other party was not, or to add this to the judicial file in writing: *"Want dat is niet praten over de inhoud van de bemiddeling, dus ik vind wel dat je dat mag zeggen."* None of the respondents complaining about the confidentiality of mediation seemed to be aware of this possibility. Note that mediators are not *in favour* of people stressing in court that they were willing to participate in mediation but that the other party refused. In their view, it could lead for example to offenders simply agreeing to participate in mediation in order to be able to, when the victim refuses, show the judge that they were willing. In addition, it leads to polarisation between the interests of victims and offenders whereas mediation is in fact set up so as to reduce polarising tendencies.

Summarising the above, it seems that when it impedes the truth about the offence to be known by the judge, both victims and offenders may have trouble with the confidentiality principle that prohibits participants to mediation to inform the judge about what has been said during mediation or about the result of a mediation procedure if the other party refuses.

§2.1.2. A lack of information about the mediation procedure and outcome

Two victims' and one offender's stories show that mediators should be on their guard when explaining to litigants the procedure of a mediation process *and* to consider carefully if all parties have been informed of the *outcome* of the procedure. The latter seems obvious, but it appeared that in one case the mediator had forgotten to inform the victim of the outcome of the mediation. After an indirect mediation process the offender had refused to sign the agreement.[57] The victim said that the last thing he had heard from the mediator was that he would be sent an agreement to sign. He had never received it, and had never received an explanation for this.

As for the *procedure* of mediation, one victim complained that she had never heard from the mediator again after the agreement was signed. Only during the second wave interview she found out that this is the default procedure. Up till that moment, she had been wondering about why she had not heard from the mediator anymore.

"Dus wij hoorden daar in één keer niks meer van. Die had niet gezegd van het is gedaan hier of zo. Gewoon van de ene op de andere dag was er geen contact meer." (Female victim of rape (respondent 38), participant)

[57] The victim himself never knew that the reason he had not been sent an agreement to sign was that the offenders had refused to sign the agreement. I found out what had happened later on when the mediator that had dealt with this case explained why the mediation did not result in an agreement.

The third participant denounced the fact that the mediator during their first conversation had not been transparent about the procedure. She had told him that the next step would be to organise a meeting with the victim, but one week later she had called him to say that she had met the victim again, and now wanted to speak to him in private once more before organising the meeting. This participant pointed to the importance of those participating knowing exactly what to expect.

§2.1.3. Coercion

Above I reported that one offender had participated in mediation because he thought it was a standard part of the criminal proceedings. This person was not the only one who felt like the choice on whether to participate in mediation was not entirely free. One victim had felt like participation in mediation had been forced upon her, which was due to the letter informing her about mediation proposing a concrete date and time for a first meeting with the mediator. Only after carefully rereading the letter she had realised that it was not mandatory for her to cooperate.

"En dan daarna hebben we een brief gekregen van Suggnomè. Dat was ook een beetje dubbel omdat, zij stellen dan direct een concrete afspraak voor, ze zeggen van we hebben gehoord dat jullie gecontacteerd zijn door het parket, we weten iets over de feiten, en we weten dat het moeilijk is en we stellen voor dat we die dag langskomen. (…) In eerste instantie hadden wij zoiets van, amai, dat wordt ons hier opgedrongen, met die brief kwam dat zo over van we spreken dan af en we komen tot bij u." (Mother of female victim of sexual abuse (respondent 50), participant)

Three other victims reported how during their introductory talk with the mediator, the mediator had urged them to participate in a direct meeting with the offender. Two of these had realised that this was optional, but the third victim at the time of the first interview still lived under the apprehension that in time she would need to face the offender in person.

"R1: We wilden wel niet geconfronteerd worden…
R2: Ah ja, er was de vraag wil je de dieven zien en met hen spreken.
R1: Dat was duidelijk iets waarop hij nogal aandrong…
R2: Aandrong ja.
R1: Een rechtstreekse confrontatie met de dieven." (Male and female victim of burglary and theft (respondents 51 and 52), non-participants)

I reported the finding that some people feel more or less obliged to participate in mediation to the mediators participating in the focus groups. An important finding was that letters proposing to people a concrete appointment for a first meeting are no longer used because experiences with such letters indeed were bad. As for feelings of coercion emanating from the letters offering mediation,

one mediator replied that statistics show that approximately one third of the people who receive a letter offering mediation contact the mediation service; from this fact she concluded that the offer is not at all perceived as mandatory. Still, several mediators said, the letters are sent by the public prosecution service, an official judicial body, which may cause people to feel more obliged to react to the letter than in case the letters would be sent by the mediation services: *"Als ik een brief krijg van het parket voel ik mij al meer verplicht dan als ik een brief krijg van een vzw"*. Another mediator added that many recipients of these letters do not understand what is offered to them, partly because of the fact that they have never heard of mediation, and it is therefore no wonder that they do not realise that it is in fact an offer and not obligatory.

§2.1.4. A lack of neutrality

Contrary to the above testimony of the offenders who said that the mediator was the first person they had talked to that did not immediately judge them, one offender had felt criminalised throughout the conversation with the mediator. He had had the feeling that he was being called on the carpet. He believed the use of mediation was discussing with the mediator the relation between him and his victim, but he actually had had the feeling that he constantly needed to defend himself. He furthermore declared that being involved in mediation as an offender gives one the feeling that one is being watched; the message conveyed is: watch your step, because the victim is not on its own.

"Dat gesprek heeft drie uur geduurd. Ik had echt het gevoel dat ik bijna anderhalf uur met haar *(de bemiddelaar)* heb moeten praten om van dat criminele weg te gaan. (…) Je wordt enorm snel gecriminaliseerd. (…) laten ze voelen van meneer, *we're watching you* een beetje he. Zo komt het eigenlijk over. (…) Om te laten aanvoelen dat dat slachtoffer niet alleen staat." (Male offender, intentional assault and battery (respondent 36), participant)

Two other offenders indicated that the mediator during their first meeting had not come across as neutral because when presenting the victim's claim she had immediately added that their counter offer should not be too low, because that would mean the end of the mediation process.

"Ik heb nog wel eens gedacht van de bemiddeling, dat is dan neutraal zogezegd, maar zo echt, ze *(de bemiddelaar)* komt dan met die lijst, en vraagt aan ons wat wij daar willen tegenover stellen. Maar ze zei al direct, pak niet te weinig want anders is het al direct gedaan met bemiddelen. Maar ja, als wij nu niet méér schade gemaakt hebben, waarom zouden we dan meer zeggen? Dat vond ik een beetje…" (Male offender, intentional assault and battery and vandalism (respondent 10), participant)

There was also one victim who had questioned the mediator's neutrality. She had had the impression that the mediator sympathised with the offender, because he brought them a story about a youngster with a difficult youth, and parents that were crying during their conversation with the mediator, whereas the thieves that had broken into their home had worked in a very professional way and thus clearly were not the type of offender that the mediator said they were. Moreover, the mediator's alternative look – he apparently had been dressed quite sloppy – had conveyed upon this victim the impression that he was biased in favour of the offender. This is because of a perception she has that people working with offenders often are idealists, which in turn in her view often are people who dress alternatively.

"Ik heb zo een beetje het gevoel dat een bemiddelaar uit idealisme ergens ook begrip wil tonen zoveel mogelijk voor de dader. Die heeft een trieste jeugd gehad, en ocharme, en slechte vrienden. Zo is dat bij mij toch een beetje overgekomen." (Female victim of burglary and theft (respondent 52), non-participant)

All these examples concern the first meetings between litigants and mediators. None of the interviewees that had participated in a face-to-face meeting with the victim complained about a lack of impartiality on behalf of the mediator during that meeting.

§2.2. Victims specifically

§2.2.1. Source of emotional distress

Participating in mediation was said above to facilitate victim recovery and to increase victims' feelings of security, and therefore to be beneficial for victims' well-being. But mediation may also *add* to emotional distress, in all stages of the procedure: pre-mediation (receiving the offer and deciding on whether to participate), during mediation and post-mediation.

Mediation may first of all cause emotional distress when one receives *the offer*. One of the mediators during the focus groups said that sometimes mediation may be negative in the sense that old wounds may be ripped open by the mediation offer. As the offer follows several months after the crime, it could be that certain emotions had already been recovered from but may again (need to) be relived: "*Soms zie je: als die mensen die informatie over elkaar nu niet hadden gekregen via de herstelbemiddeling, was het misschien wel wat meer gaan liggen*". One mediator testified that victims of severe offences had told her that they had felt sick for a whole day after reading the letter offering mediation. None but one of the victims participating in the current study showed similar signs of distress upon receiving the letter. She explained that she had initially thrown away the letter inviting her for participation in mediation because she had been through a lot already – reporting the crime and several

interrogations – and had decided that it was now up to the criminal authorities to finish the case. Her first reaction was therefore to throw away the "stupid letter" asking her to become involved again.

"We hebben eerst een brief gekregen van het parket waarin dat werd voorgesteld. Onze eerste reactie was 'neen, dat hoeft niet, het is nu gedaan, die stomme brief'. (…) Op een bepaald moment wil je dat hoofdstuk afsluiten. En dan denk je van nu is het genoeg geweest, al die ondervragingen en dit en dat, je weet dat er nog een proces komt (…)." (Mother of female victim of sexual abuse (respondent 50), participant)

I found, as said, that many considerations cross people's minds when deciding whether to take the offer of mediation. There are many worries that people are forced to face only because they are offered mediation; they are obliged to think about the offer and therefore to think back to the crime.

"Ik wou daar wel op in gaan maar ik stond daar niet voor te springen natuurlijk. (…) Je wilt dat niet allemaal opnieuw." (Male victim of violent robbery (respondent 49), participant)

"En mijn man is ook heel bang (…). De dag dat ik zeg van ok, ik ga door met die bemiddeling en ik ga naar de gevangenis en ik ga hem *(de dader)* zien, dan weet ik dat hij een week niet slaapt. En ja, dat is heel heel moeilijk, wat moet ik nu doen?" (Mother of female victim of sexual abuse (respondent 50), participant)

In all, I found only one participant talking explicitly about emotional distress caused by the offer of mediation, but as all participants to the current study were people who had contacted the mediation service after having received the letter with the offer, it is highly likely that in the general population there are more people who are distressed in first instance by an offer for mediation that again reminds them of what happened after several weeks or even months of silence.

During mediation, victims need to talk about what has for them been a painful experience. Four victims pointed out that participating in mediation forces a victim to think back to and relive the offence, and therefore is emotionally difficult. One explicitly said that talking to the offender in se is not pleasant. There is also a risk that a victim finds out that the offender is not sincere, tries to manipulate the victim, or that the offender during the meeting blames the victim for what happened. But in all, none of the victims participating in the current study reported having felt abused by the other party in the process, and none of them expressed dissatisfaction or regrets about their decision to participate in mediation.

"Het vraagt toch wel een stukje engagement in die zin dat je moet terugdenken aan die avond, en niet per se dat dat slecht is maar (…) je wilt dat eigenlijk ook gewoon een stukje achter u laten. En door aan al die dingen mee te doen denk je er dan ook wel constant aan." (Female victim of robbery (respondent 47), participant)

Two victim interviews show that emotional distress during a face-to-face meeting may be prevented by a thorough preparation on a practical level, on the level of expectations, and on the level of what one will say to the offender. The first level concerns talking through practical things such as seating arrangements, how one will greet the offender, or how the victim during the conversation will signal problems to the mediator. The second concerns the mediator warning the victim that it should keep realistic expectations, that the meeting with the offender may not lead to an all-encompassing solution, and that it may not bring definitive answers to questions or do miracles for one's recovery process. As for the third level, one victim said that she did not want to prepare one word of what she would say to the offender, whereas another one had written down carefully what she wanted to say during the meeting in order to prevent her from becoming too emotional.

"[De bemiddelaar] zei waar willen we gaan zitten, hoe zetten we hier een tafel, waar wil jij zitten, dus aan al die kleine details – in het begin dacht ik van wow – ga jij beginnen met uw gesprek, ga je rechtstaan, ga je hem een hand geven, ga je niks doen, dus dat was wel ook allemaal op voorhand doorgepraat, en dat geeft ook wel – want in het begin dacht ik, ja wat heeft dat nu belang, ik zal wel zien wat ik doe als hij binnenkomt. Maar achteraf dan denk je van ja, eigenlijk is dat voor een stuk toch wel…" (Mother of female victim of sexual abuse (respondent 50), participant)

"Ik had het ook wel goed voorbereid. Ik had ook alles opgeschreven, ik had ook mijn papieren mee met wat ik wou zeggen, ook al omdat ze van tevoren gezegd hadden dat het emotioneel kon worden, en het laatste dat ik wou was dat ik daar zou beginnen wenen." (Female victim of robbery (respondent 47), participant)

Finally, emotional distress may still be experienced *after* the mediation procedure is finished. For example, meeting the offender and seeing that he is 'normal' may lead one to adjust one's image of 'a criminal' and to realise that one cannot tell from someone's face whether they are dangerous. This may lead to increased fear for leaving the house. There was also someone who during the trial had become aware that one of the offenders he had met during mediation had not been sincere during the meeting, which was a painful realisation. One victim had been quite content about the monetary arrangement she made with the offender during mediation, but felt regret as people around her had been telling her that she had been too easy-going and should have asked for more money. She had to convince herself all over again that she had done well. I should furthermore mention the victim who said that during the days after the meeting she had been reconsidering if she had said all the right things. The men of a couple that had participated in mediation after partner violence was afraid that after the meeting they would again start arguing. Finally, one person told about how the fact that she had participated in mediation had the consequence that she had not registered as a civil party, and was upset when finding out that because of this she had no right to read the judgement.

"Ik heb achteraf heel vaak gehoord van 'Is dat al?'. Van die 1500 euro dan *(de schadevergoeding die in de bemiddeling is afgesproken)*. 'Is dat al?' (…) Ik was misschien te rap content, heb ik achteraf nog gedacht." (Female victim of intentional assault and battery (respondent 32), participant)

"Na een paar dagen begin je dan weer ineens zo te denken van, goh, man, had ik dat nu… (…) dat je in uw hoofd bepaalde stukken van het gesprek terughoort en denkt van oh ik had misschien dit ook moeten zeggen of ik had misschien dat ook moeten zeggen of ai dit of ai dat, dat je daar daarna toch wel terug mee bezig bent." (Mother of female victim of sexual abuse (respondent 50), participant)

§2.3. Offenders specifically

§2.3.1. Time consuming

One downside of mediation according to three offenders is that it is very time consuming. But all three looked from different perspectives. One complained about the time he had spent on mediation merely because he had the feeling that it had been a waste of time as the judge had not taken it into account when meting out the sentence. The second one acknowledged that the cause of delay was not the mediator but the other party. The third offender had a more structural objection: he thought the procedure of mediation is too extensive in some cases. In his case, there had been multiple preparatory talks with both victim and offender, and only then they could meet. In this respondent's opinion, spending so much time on preparing the meeting between him and his victim was unnecessary. He suggested that mediation services should fine tune the procedures to specific target groups. When working with lower class individuals, those with social-structural problems, or in cases of severe crime, he proposed, a more extensive procedure may be needed, but when dealing with middle or higher class individuals, people from households where there are no structural problems, or less severe crime, the procedure should be performed more rapidly.

"Heel goed dat het bestaat, maar men moet dat volgens mij meer indelen. Aftoetsen hoe zwaar de feiten zijn, en daarin misschien groepen maken. Mensen uit gezinnen waar al veel klachten over zijn geweest, in een sociale woonwijk, slagen en verwondingen, de vader al in de bak gezeten heeft, mevrouw is altijd zat, dat is één groep. Een tweede groep, indicaties, risicogroepen, mensen hebben allebei een vervangingsinkomen, weinig gestudeerd, teveel kinderen voor een klein huis. En dat je ook een groep hebt waarvan je zegt, dat is een eenmalig feit. Trajecten, en die zeer duidelijk bepalen." (Male offender, intentional assault and battery (respondent 36), participant)

§2.3.2. A lack of acknowledgement

This second issue does not relate to the mediation process in itself, but to the reactions to that mediation process from criminal justice staff. One offender – he was in pre-trial detention – had met

his victim for a mediation meeting in prison. He told about how during the meeting they had been disturbed by the prison director and about how afterwards the prison director had shown no interest at all in his experience. In addition, a prison warden, who had probably heard rumours about the fact that the meeting had been videotaped, immediately after the participant had left the meeting had asked him with great disdain "when it would be broadcasted on television".

"Euhm, ik dacht dat de directrice daar voor stond, voor die bemiddeling, die kaart dat ook aan en zo, en ik heb zoiets van, als zoiets gebeurt, dat de directie u efkes laat komen en laat zeggen van hoe was het, is het meegevallen, wat vond je daarvan, is dat goed? Maar niks." (Male offender, sexual abuse (respondent 53), participant)

"Als het gedaan is kom ik terug en de eerste chef die ik tegenkom vraagt aan mij 'en, wanneer wordt dat uitgezonden bij [naam televisieprogramma]?'. En dan heb ik zoiets van, jongens, waar zijn we hier allemaal mee bezig?" (Male offender, sexual abuse (respondent 53), participant)

§2.3.3. No effect on the sentence

Two offenders devaluated mediation for the single reason that it had not had any (mitigating) effect on the sentence pronounced. They both regretted that they had spent time and energy on mediation.

"V: Zeg eens, je was net bezig over die bemiddeling, wat heb je daarvan gevonden uiteindelijk?
R: *(denkt na)* Ja, een hoop zever op niks he. (…)
V: Een hoop zever omdat…?
R: Wat heeft het uitgehaald? Niks. Niks. Als ze nu gewoon hadden gezegd kijk meneer er is geen bemiddeling geweest maar in plaats van 2400 moet je 3000 euro betalen, allez ja, dat had juist hetzelfde geweest he." (Male offender, intentional assault and battery (respondent 34), participant)

§2.4. Summary, discussion and concluding considerations

Though with the exception of two offenders all participants to the current study were satisfied about their experience with mediation, they did mention a number of negative features of mediation. *Both victims and offenders* complained about the restrictions set on communicating to the judge about the content of the mediation. Furthermore, in some cases bad understandings of the procedure led to small irritations. A third downside mentioned by both victims and offenders was a feeling of being coerced into participation, and some complained about a lack of neutrality on behalf of the mediator. *Victims* may experience distress as a consequence of being offered and thinking about participating in mediation. *Offenders* brought up the fact that mediation procedures take much time, that they experienced a lack of respect for their efforts, and that their efforts had not had any effect on the outcome of the trial. The two offenders whom I said were absolutely dissatisfied with mediation were

so either because of this last reason or because what was said during mediation could not be communicated to the judge (principle of confidentiality). Below will I discuss the findings in detail.

§2.4.1. The confidentiality of mediation

The finding that people have difficulties with the principle of confidentiality of mediation in case it prevents the truth about the exact circumstances of the offence to be known by the judge is not strange. In fact, the need for all information relevant to the decision maker to be brought into the open was regarded as an important element of procedural fairness by Tyler. Tyler (1990) in order to assess the importance of the element 'accuracy of decision-making' asked the respondents of the Chicago study not only whether the authorities had gathered all the information needed in order to make a good decision but also whether they had brought all the information into the open, thus showing the importance of the second aspect. The fact that the information exchanged in mediation cannot be communicated to the court if one of the parties does not consent to it, then, does not only cause frustration, it also seems to have a negative impact on perceptions of procedural justice.

Mediation participants' opinions on the principle of confidentiality to my knowledge have not been empirically mapped, though Lauwaert's (2009) analysis of mediation agreements does provide some insight into what participants in victim-offender mediation for redress in Belgium tend to communicate to judges. Van Schijndel (2009) studied mediation confidentiality from a legal point of view, concluding that an "unconditional adherence to the principle of confidentiality" (p. 12) may cause frictions on two levels: first, participants may want to disclose information to out-of-court third parties such as family and friends, and second, the author writes, they may want to disclose mediation information in judicial proceedings. The current study shows that the confidentiality principle causes frictions especially in the latter case, that is, when the principle prohibits the truth about an offence to be known by the judge deciding on a case. No examples were found of people saying that it was problematic that they could not talk about mediation to relatives or friends. This is likely due to the fact that they are not forbidden to do so; none of the (international) legal sources on restorative justice prohibits participants in restorative procedures to communicate about their experience to members of their households or friends (Suggnomè vzw, 2005; Lauwaert, 2009).

What is interesting about the current study's findings is that whereas the issue of confidentiality is often considered a problem from victims' point of view, *i.e.* for victims who are confronted with an offender who admitted guilt during mediation but denies responsibility in court (see e.g. European Forum for Victim Services, 2005; van Schijndel, 2009), it was (only) the opposite situation of offenders being confronted with a victim admitting in mediation that the alleged offender is not guilty but refusing to sign an agreement confirming this that came to the fore in the current study.

§2.4.2. A lack of information about the mediation procedure and outcome

The findings suggest that mediators should explain the procedure of mediation very carefully. The procedure should be transparent so that participants know what to expect. Stating shat mediators should be very careful when explaining their working procedures is not to state the obvious, considering that in no less than nineteen first interviews (seven offenders, twelve victims) I found participants saying that they had no idea what mediation was when it was first offered to them. Someone called the mediator a social worker, some victims said that they initially thought that they were offered victim support ("Ik dacht dat het ging om een soort begeleiding"), a number of offenders thought they were invited to participate in penal mediation, and others thought mediation services are services concerned merely with the settlement of damages ("Ik dacht dat dat een dienst was die aangesproken was geweest om te zeggen kijk, er zijn zoveel kosten, we gaan dat zo regelen"). It seems, then, that the letter sent to people is not sufficiently clear. The mediators explained that the letters inviting litigants to participate in mediation have already been reviewed several times but that they indeed still seem not to be sufficiently clear to people.

Part of the reason that people do not understand correctly what is offered to them, one mediator said, is that there is no familiarity with mediation at a societal level. As such he expressed the same opinion as Umbreit (1993), who has written about the importance of public and system support for restorative programmes. Pali and Pelikan (2010, see also De Mesmaecker, 2010a) provide an extensive overview of research on public opinion on restorative justice, concluding that public attitudes towards restorative justice are positive and that the public supports restorative concepts such as compensation and reparation, but research also shows that the public is not generally aware of restorative alternatives to criminal justice. When offered a choice between restorative options and imprisonment, people tend to opt for the first one, but devoid of choices and faced with a prototypical crime, they hold on to traditional views on sentencing (Darley *et al.*, 2000). Keating *et al.* (1994) have explained the fact that U.S. disputants seldom choose to use mediation with a referral to U.S. citizens being unfamiliar with mediation, and Wall *et al.* (2001) believe an important part of the reason that disputants in countries such as China, Korea and Japan do often seek an intervention by a third party in case of conflict is that these citizens have repeatedly observed the success of such interventions. Cultures, so Wall *et al.* argue, "entail or produce norms that prompt parties to use mediation" (p. 372), and indeed in Belgium unfamiliarity with mediation appears to be high – few participants to the study had heard of it before being contacted by the mediation service themselves.

The fact that many citizens contacted with an offer for participation in mediation are confronted with something they do not know amplifies the importance of good training of mediators in order to improve the transparency of the procedure. In its nascent period, the restorative movement's ideal

was for restorative practices to be guided by volunteer lay facilitators, as community involvement in resolving crime was highly valued (Woolford and Ratner, 2008). By now, it is generally acknowledged that participants are entitled to and need to be guided by highly-skilled and well-trained mediators (Dyck, 2000, 2008; Raye and Warner Roberts, 2007). The European Forum for Restorative Justice in 2004 issued 'Recommendations on the training of mediators in criminal matters'[58] that state that "[t]hose participating in the mediation should get a clear idea of what can be expected and required from the mediation process and from the trained mediator". If facilitators lack the skills to handle the emotionally-laden situations that they are confronted with, taking part in restorative programmes may cause distress to the participants (Mackey, 2000).

§2.4.3. Coercion

Notwithstanding the fact that only a few respondents reported that they felt somehow coerced to participate in (direct) mediation, it is an important finding given the significance of the principle of voluntariness to mediation practices. Umbreit *et al.* (2004) for example found that the victims who are most satisfied about mediation are those who felt a strong initial desire to meet the offender.

Obviously, during telephone contacts mediators can explain to people who react to the letter offering mediation because they believe they are obliged to that the offer is in fact free (*"Vanaf dat je mensen aan de telefoon krijgt, krijg je het uitgelegd"*). Therefore, one can assume that the number of people actually participating in mediation because they feel compelled to do so is negligible. Greater danger lies in the possibility that people participate in a face-to-face meeting with the other party because of a misunderstanding or because of pressure exerted by the mediator. In order to prevent secondary victimisation to result from mediation, mediators should be very much on their guard against this. Restorative justice scholars tend to agree that *victims* can never be pressured to become involved in e.g. mediation or conferencing, though motivating them to do so is accepted. Writers such as Umbreit (1993, 2001) say that it is eligible for mediators to encourage participation (e.g. by calling possible participants' attention to the possible benefits of mediation), and Wright (1999) clearly distinguishes 'compulsion' from 'consent'. Likewise, the Belgian Deontological Code of mediators instructs mediators to take effort to motivate the parties to participate, without pressuring them. Motivating a person to participate, then, according to the spirit of this Code is acceptable and does not amount to coercion.[59]

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[58] Http://www.euforumrj.org/Training/Recommendations.pdf

[59] I have elaborated on the principle of voluntary participation in mediation for redress in De Mesmaecker, 2011.

But not all agree that actual coercion of *offenders* into restorative programmes is unacceptable. The discussion between minimalists that want to safeguard restorative programmes from the intrusion of coercion and the maximalists that believe coercion can never be excluded from those programmes was described in the first chapter. International legislation issued by the United Nations[60] and the Council of Europe[61] stresses the "free and voluntary consent of the victim and the offender"[62], as does the Belgian national legislation[63].

In a useful overview of the several techniques that may be used by mediators worldwide, in several domains and at several moments of the procedure (Wall *et al.*, 2001), one reads that mediators may use techniques that include pressing parties with threats or punishment, using personal power to press an agreement point, encouraging concessions or criticising a side's position. The authors explain that while Western mediators shy away from using such techniques, Eastern mediators do frequently use such pressure tactics "because their society grants them the power and status to do so" (p. 377). One should indeed take into account, then, that the Western style of mediating, free from coercion as much as possible, is not necessarily normatively regarded as the most appropriate style by all cultures. However, one remark to be made is that Wall *et al.*'s paper deals with forms of mediation in different areas, so it is not clear to which degree styles of mediation differ between different areas, and to which degree these pressing techniques may be used in mediation in criminal cases in these Eastern nations. Either way, Wall *et al.* when going through the mediation literature discovered that studies into styles of mediation and the techniques that should and should not be used by mediators are scarce, and expressed the hope that more attention would go to the issue.

As for mediation in criminal cases, a useful starting point may be Umbreit's (1988) distinction between an empowering and a controlling style of mediation (the first has also been called humanistic mediation, see Umbreit, 1997) and Umbreit and Peterson Armour's (2011) comparable distinction between dialogue-driven and settlement-driven mediation. Mediators adhering to the first style refrain from intervening in the communication between victim and offender as much as possible. Emphasis goes to assisting the participants to engage in communication and as such empowering them. Mediators employing the second style put more emphasis on reaching an

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[60] Art. 7 U.N. Basic Principles on the use of restorative justice programmes in criminal matters. ECOSOC Res. 2002/12.

[61] Art. I Recommendation No. R (99) 19 of the Committee of Ministers to member States concerning mediation in penal matters; art. 13.3 Recommendation Rec. (2006) 8 of the Committee of Ministers to member States on assistance to crime victims.

[62] Art. 7 U.N. Basic Principles on the use of restorative justice programmes in criminal matters. ECOSOC Res. 2002/12.

[63] Art. 2 Wet 22 juni 2005 tot invoering van bepalingen inzake de bemiddeling in de Voorafgaande Titel van het Wetboek van Strafvordering en in het Wetboek van strafvordering. *B.S.* 27 juli 2005.

agreement quickly and efficiently and control much of what is said during mediation and what is included in the agreement. Marshall (1996: 30) in a similar vein discerns between a social work model of mediation and an independent model of mediation. Whereas the second model "hands over control over the content of meetings to the parties", the first "preserves control for the professionals, who design suitable interventions according to their own judgement". Those professionals working in the spirit of this first model use what is called a directive style of mediation, which resembles Umbreit's concept of a controlling style of mediation.

Participating in mediation because one feels pressured to do so, causes stress. On the basis of Bies and Moag's (1986) study, one can conclude that coercion leads to psychological pain, which in turns leads to perceiving the actions of the one coercing as unjust. Furthermore, Van Camp (2011) writes that allowing those who were invited to participate in a restorative intervention to freely choose whether they want to entertain the offer is most important with a view to them regaining a sense of control over their lives after the offender has taken that sense of control away. These observations turn the issue of coercion into an important issue with a view to the dissertation's subject matter, *i.e.* perceptions of fairness. The exact mechanism at work most probably is the lack of decision control on participation in mediation. Above I explained the importance of this element.

§2.4.4. A lack of neutrality

The findings on the necessity of mediators' neutrality are validated by a study by Shapiro and Brett (1993), one by Umbreit *et al.* (2004), one by Miller (2011), and Van Camp's (2011) study. Umbreit *et al.* (2004) from a secondary analysis of data gathered through two other studies concluded that one of the three key variables associated with victim satisfaction with mediation was that the victim felt good about the mediator. Shapiro and Brett (1993) demonstrated the importance of third-party fairness to litigants participating in a mediation procedure; third-party fairness contributed considerably to variance in procedural justice judgements of miners whose grievances against their employers had been mediated. Do note that Shapiro and Brett's study was not situated in criminal justice, and that only one of the five statements they used to operationalise third-party fairness related to the impartiality of the third party. The particular effect of impartiality therefore remains unclear. Yet the current study confirms that in order for litigants to be satisfied about mediation and perceive it as a fair procedure, the impartiality of the mediator is crucial, and as such shows that the concept of 'neutrality' matters in informal decision making procedures too. Koh (2004) from a theoretical point of view has asserted that third-party impartiality is *more* important in mediation procedures than in litigation, because mediation is a voluntary process. But one could level against this that parties at least possess a higher degree of decision control in mediation than in litigation,

which could then compensate for a lack of perceived neutrality of the mediator.[64] In contrast, when faced with a partial judge, one has no means for preventing the judge's bias to influence the outcome. Of course, this in turn presupposes that parties faced with a biased mediator are sufficiently assertive and eloquent to protest when they feel that they cannot agree with the agreement proposed.

§2.4.5. Source of emotional distress

The findings on victim distress resulting from (being offered) participation in mediation lead to reflection about the relationship between human strength and the need for participation in criminal proceedings. Procedural justice theory and restorative justice philosophy may be quite right in saying that people involved in a criminal trial value an opportunity to be involved in these proceedings, but they have in my opinion not sufficiently considered that the need for involvement may be overridden by the emotional engagement that is required. In this I further Orth's argument (2002) that increased participation in criminal proceedings also may lead to increased psychological stress.

Restorative justice scholars will argue against this that they *have* written about the emotional consequences of participating in restorative programmes for victims. Some have indeed warned for the emotional distress that accompanies participation in restorative programmes (e.g. Reeves and Mulley, 2000), and Shapland (2000), Reeves and Mulley (2000) and the European Forum for Victim Services (2005) point out that proposals for restorative programmes convey upon victims new responsibilities and new obligations that may lead to emotional distress. But not much is known, for example, about how people experience the offer for mediation (Van Camp, 2010). As for procedural justice theory, it is true of course that procedural justice literature has focused especially on non-criminal cases where emotional investments likely are less big, and this should be taken into account. But the results reported here suggest that emotional concerns may countermand the need for participation, whereas limits to the need for participation have so far not figured prominently in the writings of procedural justice scholars.

Pemberton *et al.* (2008: 105) have advanced the question whether victims "are increasingly satisfied as they gain a higher level of participation? Or is there an optimum point along the way that is preferable to positions further up the ladder of participation?" Given the results of the current study not only on victim distress related to participation but also on the decreasing need for participation in the trial after mediation, I would say that there indeed may be an 'optimum point' of participation, and that more participation will not necessarily lead to higher levels of satisfaction.

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[64] This argument rests upon Shapiro and Brett's (1993) finding that judgements of procedural justice are equal when third-party fairness is low and process control high and when process control is low and third-party fairness high.

Going back to the main point, then, the study confirms what Pemberton *et al.* (2008) have pointed out, *i.e.* that victim distress may result not only from forced participation in criminal justice (e.g. as a witness) but also from more "victim-friendly" forms of participation. Participating in a restorative programme requires victims "to do hard emotional work" (Miller, 2011: 197). Lens *et al.*'s (2010) study on the Dutch Victim Impact Statement scheme even departed from the question: "to which extent does the gain of participating in the trial (in terms of diminution of feelings of anger and fear) weigh up against the risk of secondary victimisation?" (p. 12, my translation from Dutch). I believe that the current study's attention to the emotional distress that accompanies participation in mediation is a valuable add-on to existing literature on the emotional distress that may be caused by participation in criminal proceedings. Especially the finding that even those victims who freely chose to participate in mediation may not be unequivocally happy about the result adds to the state of the art. I found that one reconsiders the agreement, what one has said and has forgotten to say, and what the other party has said. Such things may continue to haunt people's mind for several days or longer, and in the end they may still be dissatisfied with the outcome that was achieved. This was a surprising finding as in restorative literature I have not found too much reflection on the possibility that victims are dissatisfied with the agreement reached. I did find in Umbreit *et al.*'s (1996) report on two mediation schemes in England that three thirds of the victims who participated in indirect mediation and 84 percent of those who participated in direct mediation were satisfied with the outcome of mediation. All offenders who went through direct mediation expressed satisfaction with the outcome of mediation; 79 percent of those who took part in indirect mediation did so. Though the authors prefer not to stress it, this does mean indeed that a substantial number of those who participated in mediation is not satisfied with the outcome, which is alarming and deserves more academic attention.

The findings lead me to agree with Stubbs (2002) that restorative scholars should be more nuanced when selling restorative interventions with the catchword 'participation'. Participation entails risks and may be emotionally distressing because of the extra responsibilities conveyed upon victims. Procedural justice literature has not paid much attention to the downsides of increased participation of parties to a conflict in decision making procedures either.

§2.4.6. Time consuming

The remark of the participant that said that mediation procedures should be less extensive in some cases than in others leads to reflection on how many preparatory talks with the victim and the offender should take place before proceeding to a face-to-face meeting. Some restorative practitioners and scholars assert that the face-to-face meeting is designed to seal the mediation. The parties have told their stories extensively to the mediator in the pre-mediation meetings and have

been informed by the mediator about the other party's views. The actual face-to-face meeting is set up only to seal the mediation and sign an agreement. Others regard the face-to-face meeting as the crux of mediation, and suggest that parties should be brought together from the moment that they are sufficiently prepared.

A close reading of Umbreit's (2001) fundamental guide to how to practice mediation suggests that he represents the latter approach. The purpose of pre-mediation interviews with victims and offenders, Umbreit writes, "is to learn their experience of the crime, explain the mediation process in detail, and assist the parties in deciding whether or not to participate in mediation" (p. 39). The aim is "to gather background information, to assess the client's readiness and appropriateness for mediation, [and] to coach individuals in preparation for the mediation experience" (pp. 39-40). Umbreit does not speak of multiple preliminary meetings or of an agreement already being compiled during the pre-mediation meetings. These preliminary meetings seem to revolve less around content than around preparation of the parties for a meeting on the level of communication skills, expectations and the procedure. In contrast, the mediation for redress procedure as developed in Belgium and described by Aertsen and Peters (1998) puts more emphasis on meeting the parties separately several times before actually proceeding to bring them together. The agreement is constituted throughout these separate conversations. The authors write: "the agreement's contents are repeatedly discussed in separate contacts with the mediator and possibly in a direct meeting with the other party. Hence these talks usually form the ultimate phase of the mediation process" (p. 248).

It is not the current study's aim to draw conclusions about the preferability of one or another model, as only one participant made a remark concerning the mediation procedure. Nevertheless the results do suggest that it is important when creating mediation schemes to keep in mind that victims vary widely in terms of need for elaborate preparation, and that if they are not carefully explained from the very start how many preparatory interviews will be conducted, there is a risk that they drop out. But obviously it is unlikely that mediators know at the very outset of each procedure how the specific parties will react, and how emotionally upset and needy they will be, whereas these are exactly the features that will determine the number of preparatory meetings necessary.

§2.4.7. A lack of acknowledgement

The testimony of the offender talking about the prison warden and prison director's reactions to his participation in mediation shows that the degree to which people are satisfied about participation in mediation depends not just on features of the mediation procedure or outcome itself but can be co-determined by the context within which it takes place. Negative or disrespectful reactions to one's decision to engage in mediation from others may neutralise positive feelings about participation.

There is this example of the prisoner, but one could also think of the importance of the judge recognising the parties' efforts.

It seems then that the context within which mediation operates influences people's perceptions of mediation at two stages. People may be influenced by the context when deciding to participate (remember e.g. what was said about the influence of a lack of societal experience with mediation on decisions of entering in mediation) and when it comes to validating someone's efforts (e.g. what was said here about the prison warden and the judge). Next, the influence and validation may proceed from two sources: first, the legal system and its actors, and second, people's own close ones.

§2.4.8. Final considerations

The findings reported in this second part of the chapter generally match those of previous studies on the impact of participation in a restorative programme as reported by, among others, Strang (2002), Wemmers and Cyr (2005) and Umbreit (e.g. 1992, 1995). The mechanisms that are mentioned in these studies on the effect of participation in restorative programmes on victims are very similar to the current study's findings. However, I do believe that the current study makes an important contribution to the literature as to how *offenders* experience participation in restorative programmes. Umbreit has studied offenders' views on mediation such as satisfaction with the outcome and perceptions of fairness, and Daly (2003a) has looked into young offenders' views on different aspects of participating in a conference such as whether they thought it was a waste of time, whether they were satisfied about the way the case was handled and whether participation in the conference had encouraged them to desist from crime, but the literature on what it is exactly that offenders value about participating in restorative interventions is much less extended than that on victims' perceptions of restorative programmes. The current study in that respect contributes to the literature.

§3. Mediators' views on the findings

The mediators participating in the focus groups were informed about respondents' views on the merits and demerits of mediation, and asked to comment on these. Their comments have been inserted in the description and discussion of each of these topics. I will report here some general comments concerning the list of positive and negative aspects of mediation that came to the fore.

A first conclusion is that the list according to the mediators contained no surprises, thus validating the findings of the current study. Second, one mediator when reading through the list of positive aspects of mediation remarked that none of the respondents had literally said that they valued mediation because through mediation they are involved in the handling of the case and are able to take things into their own hands. It is correct indeed that the interviewees themselves did not

express it like this. But when investigating the concrete merits of mediation that people cited one notices that many of these do relate to being involved in the handling of the case. Examples are: to be able to tell one's story, to have the opportunity to try and make the procedure run faster, to have a voice in the judgement, and to communicate one's opinion to the judge. All these attest to satisfaction with mediation exactly because it allows for involvement in the criminal proceedings. Third, mediators noticed that the things that offenders value about mediation are different from their reasons for participating in mediation. This was discussed above.

SECTION III. THE ROLE OF FAIRNESS CONSIDERATIONS IN THE EVALUATION OF PARTICIPATION IN MEDIATION

Introduction

A next step in the analysis of the findings on mediation is to examine whether the experience of mediation is judged by the same standards as encounters with the criminal justice system. The latter, the results of the current study suggest, is judged on the degree to which its actors treat citizens with respect and act neutral (performance too is a vital factor, but in the end performance too is valued because of its influence on perceptions of standing and neutrality). I will now investigate to which degree having participated in mediation impacts upon perceptions of standing and neutrality. Hints have been given throughout the description and discussion of the findings in the previous section; below I will provide an overview. Finding out whether participation in mediation impacts upon perceptions of procedural fairness should first of all allow concluding whether the elements shaping people's perceptions of their way through the criminal justice system and those shaping their perceptions of mediation differ (§1). Second, it should allow finding out whether experiences with mediation influence people's perceptions of the criminal justice system (§2).

§1. The applicability of the procedural justice framework to the evaluation of mediation

The central question to be answered in this part is whether the elements shaping people's perceptions of the actors that they encounter on their way through the criminal justice system vary depending on the absence or presence of an authority relationship. In order to answer this question I will compare the elements that people mentioned when talking about their experience with mediation to the framework of procedural justice.

Applying procedural justice theory to mediation is not straightforward, because the mediator-victim and mediator-offender relationships are very different from the relationships that procedural justice literature has studied. Procedural justice theory provides a theoretical framework for analysing authority relationships. It was first developed for testing litigants' preference for different procedures (Thibaut and Walker's control model, 1975), but the relational models reoriented its focus towards the factors shaping people's reactions to authorities and acceptance of authorities' decisions. The theory has been applied to people experiencing the criminal justice system (e.g. Casper, 1978; Casper *et al.*, 1988; Haller and Machura, 1995; Wemmers, 1996; Carr *et al.*, 2003), to employer-employee relationships (e.g. Cohen, 1985; Greenberg, 1987), to prison officer-inmate relationships (e.g. Reisig and Mesko, 2009) and to student-teacher relationships (e.g. Schmidt *et al.*, 2003). All these relationships involve a power imbalance; one of those involved has authority over the other(s).

Quite to the contrary, it is elementary to mediation that the mediator has no formal power over the victim or offender. There is no authority relationship. Notwithstanding the fact that some mediators employ a directive and settlement-driven style, it is clear that the mediator cannot oblige people to take part in mediation nor can (s)he force any decision on the resolution of the conflict upon them. Whereas procedural justice theory has studied vertical relationships, one might say, restorative practices involve horizontal relationships. Therefore it is interesting to see whether perceptions of fairness resulting from mediation derive from the same elements than perceptions of fairness resulting from an encounter with the criminal justice system. Below I will discuss all the qualities and downsides of mediation described above and investigate whether they relate to procedural justice or to something else.

§1.1. The qualities of mediation

Table VIII-I (on the next page) summarises **the positive aspects** that the participants ascribed to mediation. These aspects were considered from the point of view of whether they contribute to feelings of standing or perceptions of neutrality. If so, the corresponding procedural justice element was placed in the table. As the findings have all been discussed elaborately above, I will limit myself to a short comment here. The table shows that participation in mediation indeed enhanced feelings of standing and neutrality among the participants to the current study. The victims experienced positive effects of participation in mediation on their feelings of standing, on perceptions of neutrality (though to a lesser degree) and on perceptions of decision control. Remark that I understand decision control as control over the decision to participate in mediation and thus do not use the word here nor below in its traditional sense. As for victims, mediation especially influenced perceptions of having had opportunities for active participation (standing) and of the degree to which one's emotional needs were safeguarded (standing). The offenders experienced improvements in feelings of self-worth (standing) and in feelings of neutrality. In their case, the effect on perceptions of standing did not so much result from opportunities for active participation but from being respected, both by victims and by mediators.

The findings confirm the importance of the elements shaping procedural justice in authority relationships in a context of mediation. They show that procedural justice theory allows explaining the positive evaluations of mediation and as such back up Hollander-Blumoff and Tyler's (2008) and Van Camp's (2011) findings. Van Camp's study especially is relevant to this discussion, because this author set up research among crime victims who participated in a restorative intervention exactly with the aim of finding out whether procedural justice theory can provide an explanation for the good results that these interventions generally achieve *and* to investigate whether there are aspects of

an experience with a restorative intervention that account for its success that go *beyond* the influence of the intervention on perceptions of procedural justice. Van Camp too has found participation in restorative programmes such as victim-offender mediation to have an influence on the traditional antecedents of perceptions of procedural justice.

Table VIII-I: The qualities of mediation

	Qualities of mediation	Corresponding procedural justice element
Victims and offenders	Source of information	Standing/concern for needs/ passive participation
	Diffusing tensions with respect to attending the trial	*Well-being* Standing/concern for needs/ active participation facilitated
	Reducing the costs of litigation	*Financial investment, costs and benefits*
	Assisting in fact-finding	*Case outcome* Neutrality/fact-based decision making
Victims specifically	Recovery	*Well-being*
	Safety	*Well-being* Standing/concern for needs/ emotional needs Decision control
	Acknowledgement	Standing/dignity, respect Decision control
	Tell one's story/being listened to	Standing/concern for needs/ active and passive participation
	More certainty of compensation	*Case outcome*

Offenders specifically	Respectful dialogue	Neutrality/honesty Standing/dignity Standing/concern for needs/ active participation
	Repairing relationships	Standing/dignity
	Unbiased approach	Standing/dignity Neutrality/absence of prejudice

It seems, then, that the elements that determine perceptions of procedural justice among litigants involved in mediation resemble those that determine perceptions of procedural justice among litigants involved in a trial, but the range is different, in that for example when studying the criminal justice system I found more different elements of standing and neutrality to be important (mark e.g. the absence here of the factor 'respect for rights').

Yet as one can see from the table, the findings suggest that, as Strang (2002) and Van Camp (2011) too concluded, and in the words of the latter author, "there is more to restorative justice than mere compliance to procedural justice". Participation in restorative justice is valued by victims and offenders not *only* because of its impact on perceptions of neutrality and standing. In fact, participation in mediation seems to also affect participants' well-being (as also found by Strang, 2002) and the perception that one has a certain degree of influence on the outcome *of the trial* (not just the outcome of the mediation process).

Van Camp too identified other than procedural justice factors to account for the success of restorative interventions. The results of her study and those of the current one correspond to a large degree. The 'extra' elements that I discerned were mediation being valued (1) because of its impact on well-being, (2) because it allows one to have an impact on the outcome of the trial and (3) because it allows saving money. The extra elements identified by Van Camp were restorative interventions being valued (1) because of the flexible nature of these interventions (they can be adapted to the concrete victim's needs and timing), (2) because of their impact on well-being (which rightly brought Van Camp to observe that "the restorative intervention [is perceived as] more than a conflict resolution procedure", p. 200) and (3) because they provided for an opportunity for a two-way dialogue. The second and third of these were also identified by myself, though I contrary to Van Camp have interpreted the third as an element of procedural justice. Van Camp makes a difference between a procedure allowing for participation and voice, which in her view is one-way

communication, and a procedure allowing for two-way communication. This argument is valid and provides for food of thought for subsequent research, but I choose to interpret 'participation/voice' as including both kinds of communication.

The first element, flexibility, in Van Camp's view relates to two things. First is the fact that it is possible for victims to initially refuse to participate in mediation and to change their minds and still go along with it at a later time, and for them to change their mind about meeting the offender or postpone the meeting in case they do not feel up to it after all, despite what they thought. Second is the fact that restorative meetings may allow for all kinds of victims' needs to be addressed: those victims looking for answers to their questions, those who want to express their anger or those who want to educate the offender by confronting him in a restorative meeting, all can 'use' the restorative option. I have carefully considered this category and found that the first element of Van Camp's 'flexibility' category is included in my category 'victim safety', where I wrote about the importance of the victim being able to decide freely on whether and how to participate in mediation, and on how participation in mediation allows one to e.g. avoid the court meeting. The second element is one that came to the fore in the first section of this chapter, in which I enumerated the reasons for the litigants to take part in mediation and found that the motivations for doing so are various.

In my view, therefore, the current study and the one by Van Camp, both based on data gathered throughout the same period, validate each other's results and together make a significant contribution to the state of the art on what accounts for the success of restorative interventions and on what role procedural justice theory plays in explaining that success.

§1.2. The downsides of mediation

The **downsides of mediation** were analysed in a similar way. Table VIII-II on the next page recapitulates what participants perceived as unconstructive features of mediation. These too show that participation in mediation is likely to have an impact on perceptions of procedural justice through its impact on perceptions of standing and neutrality and perceptions of decision control.

Again the findings suggest that perceptions of fairness are not the only factor to account for (dis)satisfaction with mediation. One can read from the table that participation in mediation may also be negatively assessed in case (1) it has had a negative impact on one's well-being and (2) in case one's efforts to participate in mediation did not have any effect on the outcome of the trial.

Table VIII-II: The downsides of mediation

	Downsides of mediation	Corresponding procedural justice element
Victims and offenders	Confidentiality	Neutrality/(lack of) fact-based decision making Standing/dignity/(lack of) acknowledgement *Case outcome*
	Lack of information about procedure and outcome	Standing/ active participation impeded by lack of information
	Coercion	Intrusion upon decision control Standing/(lack of) concern for needs Standing/(lack of) dignity, respect
	Lack of neutrality	Neutrality/ bias
Victims specifically	Distress	*Well-being*
Offenders specifically	Time consuming	*Well-being*
	Lack of acknowledgement	Standing, dignity
	No effect on the sentence	*Case outcome*

§1.3. Concluding observations

The analysis leads to two concluding remarks. First, the finding that participation in victim-offender mediation contributes to perceptions of procedural fairness is in se not innovative; studies inquiring into the beneficial effects of participation in restorative programmes have commonly investigated perceptions of fairness. Umbreit (1992) for example looked into the degree to which participation in mediation contributed to positive perceptions of fairness about the processing of one's case, but it is unclear how fairness was measured exactly. Strang (2002) too concluded that participation in conferences contributes to perceptions of fairness, but this researcher equalled fairness to receiving respect and thus used a narrow conception of fairness. Daly (2003a) reports on an evaluation of participation in conferences where perceptions of procedural justice were measured by asking participants both about the degree to which they were treated respectfully, the degree to which the

coordinator seemed impartial, and the degree to which everyone had been allowed to have their say. The findings of the current study suggest that perceptions of fairness can indeed most adequately be mapped if measurement instruments gauge both perceptions of standing and perceptions of neutrality. As for standing, a distinction should be made between perceptions of respectful treatment and perceptions of opportunities for voice. As for neutrality, the most important aspect (remember that above three subcategories were discerned) is impartiality between victim and offender. The findings furthermore suggest that researchers should carefully investigate the source of perceptions of fairness: the source may be 'the criminal justice system', the judge dealing with the case after it has gone through mediation, the mediator or the other party to the conflict. It should always be made clear how fairness is measured exactly and from which source it is assumed to result. Previous studies have not always been clear on these matters; research on the effects of participation in restorative programmes would benefit from using more detailed and comprehensive measurement instruments.

Second, the *source* of perceptions of procedural justice is not only the third party but also the opponent party, and in some cases the own environment. As said, the concepts of standing and neutrality have always been studied by procedural justice scholars as proceeding or not from the third party's behaviour and acts. The results on the effect of mediation on perceptions of procedural justice show that the other party too may be a source for standing or neutrality. Victim acknowledgement for example proceeds from the offender offering his apologies or sincerely engaging in reaching an agreement that satisfies the victim. Remember also the example of the offender and his family thanking the victim for having come to the conference. As for offenders, take the example of a respectful dialogue. Finding the victim to be friendly and open to one's story instead of revengeful may restore feelings of dignity and self-worth.

§2. The impact of experiences with mediation on perceptions of the criminal justice system

The overview on the qualities and downsides of mediation provides some understanding on how having participated in mediation influences the way people have experienced the period during which they were involved in the handling of a criminal case, and how they feel after the case has been processed and closed. I have so far not discussed the impact of these experiences with mediation on perceptions of *the criminal justice system*. In this section I will try to understand if the experience of being involved in mediation influenced participants' opinions on the criminal justice system.

In order to assess whether participation in mediation had an influence on people's perceptions of the criminal justice system, all participants were explicitly asked during the post-trial interviews whether their opinion on the criminal justice system had changed. There was no clear pattern in the answers: both a number of those who participated in mediation and of those who had not said that

their perception of the criminal justice system had changed for the better, and in both groups there were participants whose perception of the criminal justice system had become more negative or who said that their opinion on the system had not changed. Four participants, two victims and two offenders, in their reply to the question referred to mediation. The offenders' opinions on the criminal justice system had not changed, one of the victims was more positive, the other did not know. As these results are not helpful I decided to, in order to investigate the theme, focus on the connections respondents made between mediation and the formal criminal justice system. Following a chronological order, I will successively discuss the pre-mediation phase, the mediation phase, and the post-mediation phase.

§2.1. Pre-mediation phase

Victims and offenders are offered mediation through a letter that is usually sent by the public prosecution service. The offer, then, comes from an official legal body, and as such may convey upon victims and offenders a feeling of acknowledgement. By offering mediation to litigants, the criminal justice system may enhance their perceptions of standing. Yet I found only one participant praising the letters she received from the prosecutor's office concerning mediation because they conveyed upon her a message of standing (taking the case seriously), and I must add that a number of participants did not understand what was actually offered, and some in this respect believed that they were being obliged to take the offer. In case this happens, it may lead to distress, and as such lead to a devaluation of the authorities making the offer.

§2.2. Mediation phase

Both remarks by a number of respondents and the experience of mediators show that mediators are by many victims and offenders perceived as someone sent by the criminal justice system and thus an employee of that system. In a number of ways this association may lead to the positive aspects of mediators to be reflected on the criminal justice system.

First, mediators are people who take the time to listen to the victim's or offender's story, and as such usually are the first persons associated with the criminal justice system to do so. This opportunity for telling one's story, then, would not otherwise be available. If one has experienced that someone was sent by the criminal justice system to listen to their story this likely has a positive influence on feelings of standing and acknowledgement. Dignity may again be restored, which is something that is often taken away from victims during a victimisation experience and from offenders during contacts with the police and magistrates. Second, mediators were contrasted with magistrates in that they are normal people. Referring to the contrast between mediators' normal

clothing and attitude and magistrates' unearthly and stiff appearance, one respondent explicitly indicated that she now had the perception that not all those working for the system are stiff people. It seems that being contacted by a 'normal' person may lead people to adjust their image of those working for the criminal justice system to the extent that they perceive this person as sent by the criminal justice system. Third, in the same line of reasoning, the fact that the mediator approaches them in an impartial (partial) way may lead to an increase (decrease) in perceptions of neutrality of the criminal justice system. Fourth, litigants praised mediators for having provided them with a lot of information, and in case they associate the mediator with the criminal justice system that should positively affect their assessment of the criminal justice system.

Yet as has become clear, much depends upon the extent to which victims and offenders associate the mediator with the criminal justice system. The mediators during the focus groups said that even if they explain people several times that they do not work for the criminal justice system, some still not seem to let go of the association. I too found that some people do not make the distinction, but others do. In the latter case, being confronted with the way in which mediators fill the gaps left by the criminal justice system possibly may lead to increasingly *negative* perceptions of the criminal justice system. For example, one respondent heavily contrasted the non-judgemental mediator with the biased or prejudiced magistrates he had encountered (*i.e.* the investigating judge). Frustration about the attitude of those magistrates may then grow. Also, when one understands that one received information not from the judicial authorities but from another service, these authorities are not the ones that will be credited for this. Concluding, then, whether or not positive or negative experiences with mediation have an influence on perceptions of the criminal justice system depends much on whether litigants are aware that the mediator is not someone part of the criminal justice system. If they are, it seems that participation in mediation will have a positive effect on how people have experienced their encounter with the criminal justice system, but not on how they perceive the criminal justice system itself.

Still the perception of the mediator may not be all-determining: some participants for example contrasted the room where mediation takes place with the one where a trial takes place and expressed a favour for the first. That may lead to more negative thinking about courtrooms, whereas without having experienced mediation there would have been nothing to compare a courtroom with.

§2.3. Post-mediation phase

One important finding of the current study was that victims who have participated in mediation and are satisfied about it have less need to attend the trial and/or to speak in court. The case on a personal level is closed; what follows concerns the penal level and is up to the authorities.

Those who do decide to go are less nervous about attending the trial. In case of direct mediation, this is because the confrontation with the offender has already taken place. They also can avoid addressing the judge in person. In all, having participated in mediation may lead victims to not participate in the trial or makes them less fearful about participating in the trial. As such, participation in mediation may contribute to reducing feelings of alienation from the criminal justice system. Even if someone decides not to participate in the proceedings after mediation, this person has a feeling that it is still involved: its opinion is included in the mediation agreement and as such conveyed to the judge and possibly taken into account.

A second main finding was the need for acknowledgement by the judge of the fact that one has taken part in mediation. People wish for acknowledgement of their efforts and the fact that they have taken responsibility through the judge bringing up mediation in court and/or mentioning and respecting the mediation agreement or efforts in the judgement. If judges indeed do so, one could say that those who participated in mediation will perceive the criminal justice system to be more attentive to their personal stories than the highly depersonalised system usually is, which would impact upon feelings of standing.

In conclusion, no uniform answer can be provided to the question whether participation in mediation (positively or negatively) affects perceptions of the criminal justice system. Possibly, a qualitative methodology is not the most appropriate one to investigate such a question.

SECTION IV. CONCLUSION

The conclusion to this chapter is built around the answers to two questions that have been advanced by restorative scholars. Johnstone and Van Ness (2007b: 11) have asked "whether encounter processes are important in their own right (because they enable those affected by crime to meet and be involved in the process of deciding what is to be done about it) or are valued mainly because of the desirable outcomes they can achieve". Umbreit *et al.* (2004: 298) in relation to restorative interventions have stated that "there is a need to go much deeper on the issues of satisfaction and fairness. What are the contributing variables that cause this, and how can programmes continue to refine their procedures to maximize the possibility of high levels of fairness and satisfaction?"

As for the first question, I suggest on the basis of the findings reported above that as far as offenders are concerned one should distinguish between pre-mediation and post-mediation views on the matter, much like Tyler (1999) has asserted that people's reasons for opting for a decision making procedure often are different from those that drive their evaluations of those procedures. The findings show that outcome-related concerns especially motivate offenders to participate in mediation, but that their post-mediation evaluation of the programme is to a large degree based on process values. Having experienced respect and having been approached in an impartial and non-judgemental manner are prime among their post-mediation statements regarding their experience.

This remark constitutes the first element of my answer to Johnstone and Van Ness' question. The second element is the observation that both procedural fairness and influence on the outcome may shape people's appraisal of mediation. Though more examples were found of mediation being appreciated because of its impact on well-being, standing and neutrality than because of its impact on the outcome of the trial, this is not a quantitative study and therefore neither one of the elements can be said to prevail over the other, at least not on the basis of the current study. But maybe the most important conclusion should be that people may participate in mediation both for procedural fairness-related concerns and outcome-related concerns: both can co-exist.

Turning to the second question, the variables contributing to fairness seem to be perceptions of standing (*i.e.* effect on self-esteem, dignity, and concern for the need for involvement) and of neutrality (*i.e.* absence of bias and prejudice and fact-based decision making). These are the elements that the results of the current study suggest when respected contribute to positive perceptions of fairness, and when intruded upon negatively affect perceptions of fairness.

Part IV. GENERAL CONCLUSION

Chapter IX. GENERAL CONCLUSION

In this last chapter I will present the conclusions that result from the study. In the first section, I will provide a summarising answer to the four research questions that have guided the study and to the overarching research question on the degree to which procedural justice theory can provide a normative foundation for restorative justice philosophy. In the second section, I will, in the tradition of procedural justice researchers, present a model on procedural justice, graphically illustrating the determinants of perceptions of procedural (in)justice and the consequences of perceptions of procedural (in)justice. In the third section, the implications of the findings of the current study for the three perspectives of justice that provided the theoretical base for the study (*i.e.* procedural justice theory, fairness heuristic theory and the value protection model) and for restorative justice philosophy are recapitulated. In the fourth section, I will go into a number of practical implications of the findings, focusing in particular on how the study can contribute to improving the organisation of restorative interventions and of criminal trials. I conclude the dissertation with a final word on the value of procedural justice theory for restorative justice philosophy in the fifth section.

SECTION I. ANSWERING THE RESEARCH QUESTIONS

Introduction

In the first section of this chapter, I will provide an answer to each of the four research questions that have guided the current study (§1-4) and to the overall research question (§5).

§1. First research question: the relative importance of procedural and outcome information pre-trial

The first goal of the current study was to find out whether during the pre-trial phase, perceptions of fairness are determined exclusively by procedural information (*i.e.* information conveying messages about standing, trust and neutrality) or is also shaped by outcome-related information. The first research question therefore was: "How do the parties to a criminal case assess the fairness of the pre-trial phase?". The sub-questions were the following:

1.1 Is attention paid to procedural information during the pre-trial phase?
  1.1.1 What is the content of this information?
  1.1.2 Which function is assigned to this information?
1.2 Is attention paid to outcome-related information during the pre-trial phase?
  1.2.1 What is the content of this information?
  1.2.2 Which function is assigned to this information?

The results that allow answering these questions are those that have been described and discussed in chapter five. In that chapter, an elaborate account was given of the criteria that the participants to the current study used to assess the pre-trial period. The pre-trial period should be understood as the period marked by encounters with the police, with investigating judges and with the prosecutor, albeit that contact with the prosecutor is never personal; it goes through letters.

Sub-question 1.1.1: Is attention paid to procedural information during the pre-trial phase and what is the content of this information?

It was found that two types of procedural information influence perceptions of fairness in the pre-trial phase of the criminal proceedings, namely information about standing and information about the neutrality of the authorities. Both standing and neutrality were subdivided into a number of subcategories. Performance issues too play a role; both perceptions of standing and perceptions of

neutrality were influenced in an indirect way by perceptions of the quality of the work of the police and the magistrates playing a role in the pre-trial investigations.

The overview below indicates which information exactly was mentioned by the interviewees evaluating their encounter with the police and the criminal authorities pre-trial.

a. *Standing*

Four subcategories of standing were found to be important to the participants' procedural fairness judgements. These were (1) perceptions of respect for one's dignity, (2) respect for rights, (3) concern for needs and (4) social standing.

Perceptions of respect for one's dignity. I found that perceptions of respect for one's dignity result not only from being treated in a friendly and polite manner by the authorities, as the concept is often interpreted. In fact, the concept is much broader. Respect for one's dignity also pertains to such things as the police believing the victim's story and taking the case seriously, providing people with a drink during the interrogations, the police putting trust in the victims and alleged offenders they are confronted with and the use of handcuffs. Victims also mentioned the use of language in letters sent by the public prosecutor and the prosecutor's decision on prosecution as elements influencing perceptions of respect for one's dignity.

Respect for rights. The findings of the current study suggest that justice research so far has not done justice to the concept 'respect for rights'. First, few studies have explicitly taken this factor into consideration – most studies investigating the importance of standing tend to focus on receiving respect, the first subcategory of standing. Second, the concept has been interpreted too narrowly. Throughout the interviews, many examples were found of participants believing that there had been a breach of one of their rights, when in fact that was not the case. As the theories on perceptions of justice revolve around *subjective* perceptions of justice, not objective evaluations of whether justice has been done, I believe the concept 'respect for rights' should be interpreted in a broader sense to also include those instances where litigants mistakenly believe that a right has been breached.

Concern for needs. The needs that were mentioned by the interviewees were various: they included emotional needs, practical needs, needs for information and needs for active participation. Yet whereas 'concern for needs' typically is interpreted as concern for emotional and practical needs, and sometimes the need for participation (Tyler and Lind (1992) included 'consideration of views' as an element of 'trust', but Tyler (1997, 2000) perceived of participation as one of two elements of

standing), the 'concern for needs' category is broader. The respondents also attached importance to the police and the judiciary being available to citizens in case they are needed (the first for interventions, the second to take quick decisions on e.g. taking abused children away from the abusing parent) and mentioned a number of needs (e.g. to no more be involved in the criminal proceedings) that could not be heeded by the police because the criminal proceedings had to be conducted in a certain manner.

Social standing is a category that has not featured in procedural justice literature before; it is a category that was added on the basis of the data in order to capture the experiences of people who feel that their reputation is being intruded upon because of being involved in criminal proceedings.

By way of a general conclusion on standing, then, the results of the current study suggest that the concept 'standing' may so far have been interpreted too narrowly, in two senses. First, those elements that have been identified previously seem to have been interpreted too narrowly; second, new determinants of perceptions of standing were found. One of the reasons why it is important to know exactly which information is taken into account by people when asked about each of these subcategories is to be able to create high-quality quantitative measurement instruments for measuring perceptions of procedural justice. Obviously, the examples mentioned throughout chapter five may not be exhaustive either, but the point for now is to show that the existing categories may need to be conceptualised of in a broader sense and that attention should go to the new categories identified.

b. *Neutrality*

The factor neutrality was divided into three elements, *i.e.* (1) absence of bias or prejudice, (2) fact-based decision making and (3) honesty.

Absence of bias or prejudice. This category grouped all interview fragments that related to (a lack of) impartiality of the police in the performance of their duties. 'Absence of bias' was interpreted as impartiality between victim and offender or between accomplices, 'absence of prejudice' was understood as absence of premature judgement about the alleged offender's guilt or about the victim's role in the offence. As for the first category, what is important to litigants is not only that the authorities refrain from discriminating between victims and offenders, but also between accomplices. The first is what comes to mind immediately when thinking about absence of bias, but the second too proved important. As for the second category, interviewees attached importance to the authorities being open to each person's story without prejudice about their role in the offence.

Fact-based decision making. This category in the past has been confused and mingled with 'decision accuracy', and together, these pointed to three issues, *i.e.* (1) that the guilty are convicted and the innocent acquitted, (2) that all the necessary information is gathered to make an informed decision and (3) that decisions are based on facts, not opinions. I suggest that the category 'fact-based decision making' points to the second of these three elements, and found indeed that the quality of the investigation had a major influence on the interviewees' perceptions of fairness.

Honesty. Victims made no remarks at all about honesty; offenders' remarks about a lack of honesty concerned the manner in which the police had written their evidentiary statements, the interrogation tactics used by the police and unethical behaviour of police officers and investigating judges (making deals with lawyers).

The general conclusion on this category is that the interpretation of the first and third subcategory so far may have been to narrow, whereas the second category has been interpreted too broad.

c. *Performance*

The third category of issues determining perceptions of the police and the criminal justice system pre-trial are those that relate to the way these bodies perform their tasks and the quality of their work. When discussing the police's efforts, victims expressed concern about whether the police had been able to find and arrest the offender and had put effort in this, and about whether the police arrived at the crime scene fast. Furthermore, they mentioned the length of interrogations and expressed satisfaction with the police calling social services outside opening hours or officers who had already left home. They talked about the police's knowledge of their cases and their ability to keep their file neatly and orderly, about the cooperation between different police services and about mistakes the police had made during the investigation. Offenders would come up with the number of police officers that had been sent to arrest them, with the police's use of power and with the thoroughness of the police investigation. When discussing the efforts of the judiciary, it was suggested that reconstructions of crimes should be organised more often, and that more attention should go to gathering information about the victim and about the situation of the offender (family and financial).

Sub-question 1.1.2: Is attention paid to procedural information during the pre-trial phase and which function is assigned to this information?

The sub-question about the function of procedural information is one gauging for the relative importance of outcome concerns and relational (*i.e.* group status and self-regard) concerns. What I found is that performance, neutrality and standing are considered important both because of concerns for the outcome and concerns for self-regard and status, but also because of a concern for well-being, which is a reason that I have not found in procedural justice literature. I will discuss each of the determinants of procedural justice with a view to the function that the specific information serves.

a. *Standing*

Perceptions of respect for one's dignity The role of being treated with respect for one's dignity – which as said presupposes more than being treated in a friendly manner – seems different for victims and offenders. Offenders when talking about the consequences of the police not respecting their dignity described how bad treatment had an influence on **self-regard** and image of the self. They had trouble with the stamp of 'criminal' that was left on them and reduced their identity to 'a criminal' or 'a nobody'. Those offenders who talked about impolite treatment received from investigating judges did not refer to the impact of this kind of treatment on self-regard but reported that they refrained from voicing their opinion out of fear that if they would defend themselves, the judge's decision would be unfavourable. This means that an **outcome-related concern** played a role here.

The victims did not explicitly link the degree to which the police respected their dignity to self-regard or images of the self. They would rather talk about feeling victimised again in case of bad treatment or in case the police do not believe their story, and about feeling acknowledged in case of good treatment. The latter observation hints that though they did not say so explicitly, perceptions of respect for dignity did impact upon **self-regard**; the first suggests that these perceptions also influence victims' **well-being**. The degree to which victims experienced respect from police officers (including belief for victims' stories and taking the case seriously) had an impact on emotional recovery. This means that not only group status or outcome concerns play a role when evaluating the degree to which one has been respected by authorities, but also concerns for well-being.

Respect for rights Looking into the reasons why people are concerned with breaches of rights, it seems that **both outcome concerns and concerns about self-regard and social standing** play a role. A number of complaints relate to a (perceived) lack of respect for rights preventing people from properly defending themselves, which is an illustration of an outcome concern. Other examples

relate to offenders' concern for fear of a decrease in standing vis-à-vis other people; these relate especially to the police breaching their duty of professional secrecy.

Concern for needs Concern for victims' and offenders' needs serves multiple purposes. First, paying heed to *emotional and practical needs and the need for information* is important with a view to **well-being**. Victims are better able to cope with their experience and feel more secure in case they receive information about the progress of the case and what happened to the offender. Offenders mentioned less needs than victims but those that were mentioned also showed an impact of concern for needs upon well-being. This again shows that the reason why people care about being treated with due attention for their needs does not necessarily relate to group standing; other factors are at work too, *i.e.* concern for one's well-being. Second, it was found that people *participate in the criminal proceedings* both for instrumental and non-instrumental reasons. Those participants that planned on voicing their opinion in court often gave reasons that related to **influencing the outcome**. Do note, however, that the victims who indicated a wish to speak in court in order to influence the outcome were not repressive; most wanted to ask the judge not to be too severe on the offender.

Social standing This finding is a prime example of how procedural fairness information matters because of concern for **group status**.

b. *Neutrality*

Absence of bias or prejudice The people who indicated that the police had been biased or prejudiced seemed to be concerned both with the impact of being treated in a biased or prejudiced way on their **group status**, with its impact on immediate **outcomes** (such as being held in custody) and the outcome of the trial (offenders), and with its impact on their feelings of **safety/well-being** (victims). Perceptions of neutrality lead offenders to feel more confident that the outcome of the trial will be fair, and lead victims to feel more at ease and reassured that the offence will not repeat. This means that other than social standing or outcome concerns too are important for explaining the importance of neutrality.

Fact-based decision making (interpreted as 'the quality of the investigations, of information-gathering') was found to matter to people because of a concern for the **outcome** of the trial. The reason why victims and offenders alike attached great importance to the police and the judiciary putting effort in gathering all the information necessary was because they were afraid that the judge would otherwise take a wrong decision. Yet the results that were reported in chapter seven suggest that the reason

why people care about the outcome in turn *does* relate to a concern for **standing**. A main concern for people about the outcome of the trial is the consequence of the outcome for one's situation. Victims and offenders are concerned that if the judge does not have all the necessary information to his disposal, (s)he will not be able to fine-tune the sentence to the specific offender's situation, which is considered important in order to make the offender desist from crime. Moreover, some victims of non-strangers said that the sentence would also affect theirs and their children's status and it was found that in case the offender was acquitted, this had an impact on the victims' sense of self-worth. Concluding, then, the data suggest that although at first sight instrumental concerns drove the participants' need for high-quality fact-finding, relational concerns may play a role too, albeit in an indirect way.

Honesty Problems with police officers acting in a dishonest way mattered because of concern for the impact of this behaviour on the **outcome** of the trial or because it created **disparity** between offenders (inequality before the law).

c. *Performance*

The performance issues enumerated by the interviewees, that is, those issues relating to the quality of the authorities' work, were found to have an indirect impact on perceptions of standing and neutrality. *Victims* were found to attach importance to for instance the police doing all that is possible to grab hold of the offender not out of retribution but because it gives them the impression that the case is taken seriously, which conveys a message of acknowledgement. Likewise, the police taking the effort to call services outside opening hours or police officers who already left home too gives the impression that the case is taken seriously. The impact of perceptions of police performance on victims' fairness judgements, in other words, goes through an impact on perceptions of standing (more specifically respect for dignity). *Offenders* when discussing performance issues referred to instances of the police not being honest (e.g. during the interrogation) or being prejudiced (e.g. the feeling that they did not investigate the case well because the offender is a recidivist). This means that the impact of police performance on offenders' fairness judgements goes mainly through an impact on perceptions of neutrality. The reasons *why* offenders care about the police behaving neutral were spelled out above.

Sub-question 1.2.1: Is attention paid to outcome-related information during the pre-trial phase and what is the content of this information?

This sub-question enquires about the degree to which outcome-related information played a role for people during their contacts with the police and/or magistrates during the pre-trial phase. It was found that concerns about *the outcome of the trial* played a role indeed. A first important outcome concern was found among the offenders considering whether they would voice their own opinion towards the investigating judge interrogating them. They took into account whether doing so would have a negative influence on the decision on whether or not to keep them in preliminary custody. A second outcome concern during the pre-trial phase was found with those offenders who feared being punished to such a degree that it led them to make false confessions. Outcome concerns were furthermore found to be the major reason why participants were concerned about the quality of the investigation of the offence by the authorities, and an important consideration for people who considered participating in the trial or talking to the judge, those concerned about the way the police had written down their words in their evidentiary statements, those saying that they had not received sufficient time for reading their statement before signing it or had not had the chance to change their statement, the one reporting that the police officers had provoked him into aggressive behaviour, the parents that were not allowed to be present during the interrogation of their child, those who complained about the age limit set for children's opinions to be heard and the participant that criticised the interrogation tactics of the investigating judge. In all, this means that outcome concerns may co-determine the importance to people of all aspects of procedural justice except for being treated with respect and dignity. The latter is valued exclusively for its impact on well-being and group status/self-regard.

Not only the outcome of the trial but also *'interim' outcomes*, by which I mean concerns about results that should be realised *during* the pre-trial phase, were found to play a role. Victims were concerned about an array of issues relating to the offender being arrested and brought before court: they mentioned mistakes that the police had made that almost had led to the offender going scot-free, the earnestness with which the police had tried to track down the offender and the cooperation between different police services. Offenders were concerned about the fact that they had had to spend a night in a cell or had been ordered to stay at the police station whereas accomplices had not. This means that when speaking about 'outcome concerns' one should not only consider concerns for the final outcome of the trial but also for 'interim' outcomes.

Sub-question 1.2.2: Is attention paid to outcome-related information during the pre-trial phase and which function is assigned to this information?

Though this question seems redundant – one would obviously assume that outcome information matters simply because of the outcome in se – this is not true. An example of an outcome having an impact on feelings of **self-regard** is the 'interim' outcome of the offender being arrested: victims expressed that they derived a feeling of acknowledgement from the offender being arrested because it is a sign that the case is taken seriously. An example relating to offenders is that of being locked up in a police cell for a night while accomplices are not: this is outcome-related information that conveys a message about one's **group status**.

§2. Second research question: the relative importance of procedural and outcome information post-trial

The second goal set for the current study was to find out which are the determinants of perceptions of fairness during the post-trial phase. The results that will help answer this question are those that were reported in chapter six. The question leading that chapter was whether people, once they know the outcome of the trial, talk exclusively about the outcome or do still consider procedural fairness information when they consider how the experience has been for them. The second research question therefore was: "In which terms do the parties to a criminal case talk about their court-related experience in the post-trial phase?". The sub-questions were the following:

2.1 Is attention paid to procedural information in the post-trial phase?
    2.1.1 What is the content of this information?
    2.1.2 Which function is assigned to this information?
2.2 Is attention paid to outcome-related information in the post-trial phase?
    2.2.1 What is the content of this information?
    2.2.2 Which function is assigned to this information?

Sub-question 2.1.1: Is attention paid to procedural information during the post-trial phase and what is the content of this information?

The analysis of the second wave interviews showed that five types of procedural information determine perceptions of fairness in the post-trial phase of the criminal proceedings, namely (1) information about standing, (2) information about neutrality, (3) issues relating to the performance of

the judiciary, (4) court organisation and procedures and (5) the behaviour of the other party. I will extensively discuss each of these five types of information below, but should first mention that again, trust was not found to be a determinant of perceptions of fairness, and wish to stress that two new determinants were found (the behaviour of the other party and court organisation), that is, determinants of perceptions of fairness that have so far not figured in (procedural) justice literature.

a. *Standing*

The same four subcategories of standing that were identified as determinants of perceptions of standing during the pre-trial phase were found to influence perceptions of standing during the post-trial phase. These are (1) perceptions of respect for one's dignity, (2) respect for rights, (3) concern for needs and (4) social standing.

Perceptions of respect for one's dignity The results confirm that the issue of respect for dignity refers to more than only the degree to which magistrates use respectful language and are friendly towards litigants. Victims for example also took into account the degree to which the judge had expressed understanding for their situation and if the judge had reprimanded the offender. Offenders again referred to the use of handcuffs and someone remarked that judges' raised benches convey a message of inferiority.

Respect for rights One participant reported a mistaken perception of a lack of respect for rights; he thought the authorities had handcuffed him in an unauthorised manner. Two people mentioned that the court's administrative staff had breached its duty for professional secrecy.

Concern for needs The participants this time mentioned no other needs than emotional and practical ones and needs for involvement in the trial. The first two types of needs were mentioned only by victims, who talked about a need for support before, during and after the trial (e.g. someone telling them what their rights are or accompanying them to the trial) and about the need for interpreters. Turning to the need for active participation in the trial, the respondents mentioned six issues that had made it difficult for them to speak in court or even withheld them from doing so. These were: (1) fear that defending oneself may lead the judge to pronounce a harsher sentence, (2) emotions, (3) the complexity of the criminal justice system, (4) the presence of an audience in court, (5) a lack of knowledge about one's rights and opportunities for participation, and (6) the court setting and courtroom procedures. As for passive involvement (receiving information), a main issue was that litigants are not automatically informed about the outcome of the trial.

Social standing The current study suggests that when people evaluate their encounter with the criminal justice system, one aspect that is taken into account is if one's involvement in the trial has had an impact on how one is perceived by fellow group members. Two examples were found: the presence of an audience in court and the fact that the letters sent by the public prosecutor are not decently closed. The latter example shows that the smallest details may be taken into account by litigants when considering their encounter with the criminal justice system.

b. *Neutrality*

The determinants of perceptions of neutrality in the post-trial phase were largely the same as those determining perceptions of neutrality in the pre-trial phase, except that no examples relating to (a lack of) honesty on behalf of the authorities were found. Therefore below I will discuss (1) absence of bias or prejudice and (2) fact-based decision making.

Absence of bias or prejudice The examples found of bias experienced in court concerned the traditional interpretation of bias as discrimination between victim and offender, yet none of those examples related to the judge's attitude. Rather, a clerk's attitude was mentioned, and there were a number of general observations about how offenders are better informed than victims, at least according to the respondents. As for prejudice, there were offenders claiming that the judge had been convinced of their guilt from the start, and the sex of the judge too was found to be an issue: female judges are thought to be more severe than male judges.

Fact-based decision making When discussing whether the judge engaged in good investigation of the case, people discussed the degree to which (s)he checked victims' claims for compensation instead of relying on solutions of convenience, the degree to which (s)he looked at each case individually instead of treating them as if on an assembly line and the degree to which (s)he had studied the file.

c. *Performance*

The performance category was dominated by irritation about the fact that criminal procedures are frequently slow moving. Other concerns mentioned were that the criminal authorities do not take their responsibility and that the criminal justice system is utterly bureaucratic.

d. *Court setting and organisation*

It was found that when people assess their experience in court, they are attentive not only to issues

pertaining to standing, neutrality and performance, but also to the way trials are organised. Participants considered the presence of an audience in court, the way time is used in court and the position of victims and offenders vis-à-vis each other. The customs and habits governing trials, such as the use of raised benches and gowns and the fact that one needs to rise when the judge does, received much attention too.

e. *The behaviour of the opponent party*

An element that should be added to the list of elements that are taken into account by victims involved in a criminal trial when considering their experience is the behaviour of the offender and the offender's lawyer in court. Victims were found to be attentive to whether the offender shows visible signs of remorse and to be offended by the offender's lawyer using tactics that they disapprove of.

Sub-question 2.1.2: Is attention paid to procedural information during the post-trial phase and which function is assigned to this information?

The second wave interviews were opened with a general question asking respondents what they would begin with when asked how the experience had been for them. The answers were dominated by remarks about procedures, and again, it seems that outcome, self-regard and well-being were the respondents' main concerns.

a. *Standing*

Perceptions of respect for one's dignity The results on respect for dignity show that the degree to which one is treated in a way to respect one's dignity communicates about two things. First, it conveys a message about **group status**: it influences victims' perceptions of acknowledgement and offenders' self-regard. Second, it communicates about the likelihood of obtaining desired **outcomes**. Victims and offenders alike base predictions about the outcome of the trial on the way the judge treats the offender in court.

Respect for rights The concern for having been handcuffed in an unauthorised manner relates to being treated with **respect for dignity**. The administrative staff informing litigants in a way not allowed served the particular litigants' **need for information** (standing) and **well-being**.

Concern for needs Again it seems that the authorities paying heed to litigants' various needs serves multiple purposes. First, the emotional and practical needs mentioned serve the purpose of **well-being**, which is a finding in line with the one from the first wave interviews. Second, it seems that opportunities for active participation in the trial are valued especially if the litigant believes that his/her input was taken into account by the judge, thus pointing to a concern for the **outcome** playing a role.

Social standing The role of information about how involvement in criminal proceedings may affect how one is perceived by other people is obvious: clearly it is a concern for **group status** that is at stake here.

b. *Neutrality*

Absence of bias or prejudice Few examples of bias and prejudice were found, but one of the offenders who thought the judge had been prejudiced said that she had felt like she was 'a nobody', indicating an effect of being treated in a prejudiced way on **self-regard**. The fact that a number of respondents explicitly linked being treated with respect to neutrality corroborates this stance.

Fact-based decision making The reason why victims cared about good information-gathering and the judge studying the file well seems to have to do especially with **acknowledgement**: authorities taking the time and effort to seriously try the case convey the message that they are taking the case seriously, which matters with a view to victim acknowledgement. The interview fragments did not provide good insight into why offenders cared about good investigation of the case. Above it was suggested that they are so out of concern for the judge's decision. No contra-indications to this line of reasoning were found during the second wave interviews.

c. *Performance*

Much like what was found during the first wave interviews, issues of performance seemed to matter to victims in part because the authorities doing their jobs and taking the case seriously conveys a message of **victim acknowledgement**. Another mechanism that is at work for both victims and offenders is that the fact that the criminal procedures are slow impacts upon their **well-being**. Awaiting the trial is a stressful period for all and according to some offenders feels like punishment. **Outcome concerns** too accounted for much of the distress caused by the slowness of the criminal procedures (e.g. the fact that interests are added to compensations). In the second wave interviews, no examples were found of the performance of the authorities influencing perceptions of neutrality.

d. *Court setting and organisation/the behaviour of the opponent party*

On the basis of the findings of this study I suggest that when considering how people experience an encounter with the criminal justice system, issues pertaining to the way trials are conducted and the behaviour of the opponent party in court should be taken into account. These issues have an impact upon perceptions of fairness, pre-eminently **standing**, and they influence the way people experience their encounter with the criminal justice system on an emotional level (**well-being**).

Sub-question 2.2.1: Is attention paid to outcome-related information during the post-trial phase and what is the content of this information?

During the analysis of the interviews, attention was paid to whether the participants when asked about their experience in court or with the criminal justice system referred to issues pertaining solely to concern for group status or well-being or also to issues related to outcome concerns.

A number of examples were found of how outcome concerns played a role in the evaluation of the trial. First, it was found that offenders appreciate judges being forthcoming and friendly not just because it is assumed important with a view to respect for one's person but also because they believe that in case the judge behaves nice, (s)he will not pronounce a severe sentence. Second, the majority of the respondents who had taken the floor in court were concerned with whether the judge would take the information they conveyed into account. Furthermore, the outcome of the trial was the main concern of those who said that the subpoena deadlines had not been respected or complained that they had not been informed about the date of the trial in time and for the parents that considered it unfair that their son would be tried in the absence of his underage accomplice.

On the basis of the current study I could not say that outcome information was more important than procedural information or vice versa for the participants when considering their encounter with the criminal justice system. In fact, it seems that both are important for litigants to be able to think positive about their experience. Still, I would say that in case the outcome is not deemed fair, the fact that the procedure was does not always provide for protection. People at the same time consider being treated in a fair way imperative and need more than being treated with respect for standing and in a neutral manner. If a fair procedure does not result in a fair outcome, it is unlikely for people to be truly satisfied about their experience. I found one quote to be especially illustrative for this stance:

"C'est un ensemble. Il faut que les gens soient traités normales, évidement. Mais un jugement doit être équitable."

Sub-question 2.2.2: Is attention paid to outcome-related information during the post-trial phase and which function is assigned to this information?

The outcome of the trial does not just matter to victims because they want to take revenge on the offender or to offenders because they fear losing their freedom or a lot of money. In fact, as said, the outcome bears importance to offenders at least in part because of its impact on their **social standing**: if the judge reaches a decision that is adapted to one's specific situation, one has a bigger chance of keeping one's head above water and preserving one's status in society than when the judge pronounces a sentence that pushes one deeper into trouble. This in turn is important to victims because they care about their own and societal **safety** and as such their **well-being**.

§3. Third research question: in search for moral mandates

The results reported in chapter seven allow answering the third research question, which is: "How do the parties to a criminal case assess the fairness of the outcome that was pronounced in their case?" The sub-questions were:

3.1 Do they display a strong belief (moral mandate) about the appropriateness of punishment and about the most appropriate punishment?
3.2 Is their belief about the appropriateness of punishment and about the most appropriate punishment fluid or fixed in nature?
3.3 Are comparisons made between the outcome of the trial and one's moral mandate, one's own expectations about the outcome, outcomes of similar cases or court rulings in other cases that they have experienced themselves or that have been experienced by friends, relatives or acquaintances?

Sub-question 3.1: Do they display a strong belief (moral mandate) about the appropriateness of punishment and about the most appropriate punishment?

In order to analyse the results on sentencing preferences, I tried to provide for conceptual clarity by discerning between two elements of punishment, *i.e.* censure and sanction. The victims and offenders who participated in the current study in my view held a moral mandate instructing that those guilty of an offence should be *censured*, and as such the findings are supportive of moral mandate literature. It is indeed the case that those who have been victimised feel a strong need for formal societal disapproval of criminal acts by a court, and those who have committed an offence agree that it is

acceptable for society to express such formal disapproval. Yet as for the level of *sanction*, the specific sentencing preferences that the participants expressed were not sufficiently strong, universal and non-negotiable to be labelled 'moral mandates'. I found that litigants attach more importance to the sanction serving the goal that they themselves believe punishment should serve than to be exactly the sanction that they had in mind themselves. Maybe, then, people have a moral mandate on *the purpose of sanctioning*, yet as the principle that judges are the ones deciding on punishment was widely supported the word moral mandate may not be in place here either.

Sub-question 3.2: Is their belief about the appropriateness of punishment and about the most appropriate punishment fluid or fixed in nature?

It was found that the sentencing preferences that were expressed by the victims and offenders differed across time and across different situations. The most obvious example is that of victims victimised by someone they knew prior to the offence saying that they would have a different opinion on punishment should they have been victimised by a stranger. Other victims said that their opinion would be different if they had been asked about their view on punishment at another time: as time goes by, one becomes less punitive and less concerned about the outcome of the trial. The offenders attached great importance to the sanction being such that it would not affect their family; if they had not had children or a wife they would not have cared about the exact sanction that would be imposed on them as much as they did. Concluding, sentencing preferences are fluid in nature.

Sub-question 3.3: Are comparisons made between the outcome of the trial and one's moral mandate, one's own expectations about the outcome, outcomes of similar cases or court rulings in other cases that they have experienced themselves or that have been experienced by friends, relatives or acquaintances?

Neither victims nor offenders were found to conduct a search for information about the default outcomes of trials on cases such as their own. When they came across such information they would consider it – offenders would make remarks about their outcome in contrast to that of other inmates, for example – but the comparison of the own outcome to the outcome reached in other cases was never the sole or main ground on which the outcome of the trial was evaluated.

§4. Fourth research question: the influence of participation in victim-offender mediation

The question that guided the description and discussion of results in chapter eight was: "To which degree does participation in victim-offender mediation for redress influence perceptions of fairness of the parties to a criminal case?" There were three sub-questions:

4.1 To which degree do (intrusions upon) perceptions of procedural justice account for (dis)satisfaction with participation in mediation?
4.2 To which degree does participation in mediation influence the way people experience their encounter with the criminal justice system?
4.3 To which degree does participation in mediation influence people's perceptions of the criminal justice system?

Sub-question 4.1: To which degree do (intrusions upon) perceptions of procedural justice account for (dis)satisfaction with participation in mediation?

On the basis of the findings of the current study it would seem that many of the reasons why victims and offenders who participated in mediation are or are not satisfied about this experience relate to the determinants of procedural justice, namely standing (including participation/voice) and neutrality. Procedural justice effects may account for many of the positive findings reported in previous studies evaluating participants' level of satisfaction with victim-offender mediation.

Still two remarks are to be made. First, not every single determinant of procedural justice plays a role: respect for rights for example was not found to be of importance. Second, procedural justice cannot explain everything, that is, mediation is appreciated *not only* because it gives participants the feeling that they are being treated in a qualitative manner. Equally important are that they have the feeling that by participating they can influence the outcome of the case, that it allows saving money that would otherwise have to be spent on lawyers and/or legal costs, and that participation in mediation affects their well-being in a positive way. Likewise, dissatisfaction with participation in mediation resulted not only from intrusions upon perceptions of standing or neutrality but also from participation in mediation having been unhelpful for one's well-being and from participation in mediation not having been taken into consideration by the judge deciding on the case.

Sub-question 4.2: To which degree does participation in mediation influence the way people experience their encounter with the criminal justice system?

Having participated in mediation clearly affects how people involved in a criminal trial live through and experience this time. Participation in mediation alleviates much of the distress that comes with criminal trials. Victims who participated in mediation for instance reported that it had allowed them to find closure, to release negative feelings such as feelings of guilt, and to participate in the criminal proceedings in a safe and comfortable way, protected from physical and emotional aggression by the perpetrator. Moreover, participation in mediation had contributed to feeling acknowledged, which proceeded in particular from the offender and/or mediator expressing understanding for their position and their grief and from having had the chance to voice one's own opinion on what had happened, what was happening, and what was to happen in the future. Some victims added that participation in mediation had taken away the distress that comes from being unsure of whether one will receive compensation. Offenders too reported an array of ways in which they had felt better because of participation in mediation. They had experienced respect from their victims and from the mediator and had been able to restore relationships.

Reasons for both victims and offenders having felt more at ease during the time awaiting the trial thanks to having participated in mediation were that they had received information not only on the other party but also on their rights and the progress of the case, that they were better prepared for the trial and felt less tensed about attending it, that it had saved them some money and that they had the feeling that through the agreement reached they had been able to participate in fact-finding.

Yet I also noted some ways in which participation in mediation was frustrating and therefore negatively affected well-being. Some participants had felt disappointment as they found out that there are boundaries to which information resulting from mediation can be communicated to the court, some had felt coerced to participate in mediation, some mentioned that the mediator was not neutral and others said that the procedures are not sufficiently clear and transparent. A number of victims experienced quite some distress about participation in mediation; offenders experienced a lack of acknowledgement for their efforts, thought mediation is overly time-consuming, or were frustrated about the fact that the judge had not taken into account their efforts for participating in mediation when deciding on the sentence. Still, in all, there were only two participants, both offenders, who regretted having participated in mediation. The reason for their dissatisfaction was that in their view the judge when deciding on the sentence had not taken their willingness to participate in mediation into account, and that the principle of confidentiality of mediation had prevented the truth about the offence from being known by the judge.

Sub-question 4.3: To which degree does participation in mediation influence people's perceptions of the criminal justice system?

It has been challenging to disentangle if and how the experience of mediation had impacted upon the participants' perceptions of the criminal justice system. The answer to this question is not straightforward. One could assume that those who participated in mediation saw the criminal justice system in a more favourable light than others or than before, as procedural justice theory predicts that those who experience procedural justice during an encounter with an authority are more likely to be satisfied with the encounter. But no direct indications were found of the mediation experience affecting perceptions of the criminal justice system in one or another way. I did find that the degree to which mediators are perceived to be part of the criminal justice system may be important to answering the above question. In case they are, many of the positive aspects of mediation reflect on the criminal justice system. In case they are not, the comparison between mediation practices and the criminal justice system probably is to the disadvantage of the latter.

§5. Procedural justice theory as a normative foundation for restorative justice

The question leading this dissertation was: *"To which degree does procedural justice theory provide a normative foundation for restorative justice philosophy?"* The answers to the four research questions allow formulating a general conclusion. This conclusion consists of two building blocks: (1) a conclusion on whether procedural justice theory's allegations that people involved in decision making procedures care as much or even more about procedural fairness than about outcome fairness applied to the participants to the current study, and (2) a conclusion on the degree to which procedural justice theory can account for the success of restorative interventions.

First of all, in no way can the importance of the procedure followed to come to an outcome in a criminal law context be underestimated, neither in a pre-trial context nor in a post-trial context. As described in the problem definition, one main concern of this study was to investigate the use of procedural information and outcome information pre-trial and post-trial (with the trial including sentencing). The reason was that the theoretical models described in chapter two and three make different allegations about the use of procedural and outcome information pre- and post-trial. The results of the current study show that procedural information matters to litigants both pre-trial and post-trial, thus contradicting two of the value protection model's basic assertions, *i.e.* (1) that procedural fairness information plays no role at all pre-trial and (2) that procedural information is considered post-trial only in case outcomes go against people's moral mandates. They furthermore suggest – I will come back to this below – that procedural information has more value to people than

merely being a substitute for outcome information, contrary to what fairness heuristic theory argues.

As for the contents of the procedural information playing a role or the function that it has, there are no apparent differences pre-trial and post-trial, except for obvious matters such as receiving information being more important pre-trial, and the two extra categories that were added post-trial. But I could not say for instance that being treated with respect by the police is more or less important to people than being treated with respect by magistrates in court, or that offenders are less offended by the police looking at their case in a prejudiced manner than by magistrates doing so.

In all, then, the manner in which legal proceedings are conducted and the manner in which legal professionals treat the parties involved in these proceedings are indeed important determinants of satisfaction with and perceptions of fairness of the criminal justice system, both pre-and post-trial, which is important with a view to assessing the value of procedural justice theory's claims.

The second component part of the conclusion concerns the question whether (dis)satisfaction with restorative interventions indeed can be explained with a reference to procedural justice. The answer is that procedural justice theory can indeed explain the success of restorative practices and as such provide a normative foundation for restorative justice, but (1) it does so only in part and (2) one should be aware that participation in restorative interventions also may affect perceptions of procedural justice in a negative way.

As for the first caveat, procedural justice explains the success of restorative justice only *in part*. There are other factors that explain (dis)satisfaction with restorative justice than only the degree to which participation in a restorative intervention affects perceptions of procedural justice. Factors mentioned were the degree to which participating in the restorative intervention allows influencing the outcome of the trial, the degree to which it affects one's level of well-being and the degree to which it allows saving money. As for the second caveat, caution is required when unequivocally stating that participation in negotiated forms of justice will lead to positive perceptions of procedural justice. For example, the importance of a respectful atmosphere between the parties was mentioned as a decisive factor. One of the victims participating in the study quite rightly pointed out that mediation may be offered by the authorities, but that the atmosphere still is determined by the participants (*"l'atmosphère, c'est nous qui faisons ça hé"*). The respondents also attached considerable importance to the mediator behaving in a neutral way. Consequently, one should not from the mere fact that people are offered a chance to become involved in negotiated forms of justice conclude that they are more satisfied about the criminal procedures, which is the impression that one may be left with after reading procedural justice literature and, depending on which sources exactly one consults, restorative justice literature. Much depends on the quality of the implementation of the restorative intervention.

SECTION II. PRESENTATION OF MODELS OF PROCEDURAL JUSTICE

Introduction

In this second section I will present two models, which will be integrated in one overall model near the end of the section. The first model to be presented is a model on the determinants of perceptions of procedural justice (§1). In chapter two, each of the relational models of justice was illustrated by the graphic models that were presented by the theorists. I will therefore also graphically illustrate the findings of the current study on how perceptions of procedural justice are formed. The second model to be presented is a model on the determinants of perceptions of the criminal justice system (§2). These three models will ultimately be integrated into one model (§3).

Before presenting these models, a word of caution is in order. Two observations fit. First, as the current study's results are based upon a sample composed by means of purposive and convenience sampling, the models should be regarded as applicably only to the participants to the current study. In chapter four, I have repeatedly warned that the methodological choices that have been made prohibit generalisation of the findings to a broader population. Second, the models are presented as hypothetical and theoretical models, as they are based on qualitative data. As said before, I do not claim to make any statements about causality; the models should be tested by means of quantitative research before any such claims about causality can be made. Yet I did construct models indicating possible influences between the different components of the models where I believe these are present. I believe this is justified, for two reasons. First, the data are based on a longitudinal study, observing people going through an experience while they are experiencing it, and are very rich and detailed. For this reason, I believe it is acceptable to create models on the basis of these (qualitative) data (see also Maxwell, 2004), with the caveat that I am aware that in order to establish causality, quantitative testing is needed. Second, it is my hope that the findings of the current study provide inspiration for future research. To this end, I structured the findings in a graphic way.

§1. A model of perceptions of procedural justice in a criminal law context

The findings of the current study relating to perceptions of procedural fairness allow creating a model of procedural justice judgements (see Figure IX-I on the next page). In chapter five and six, I set off to investigate which elements determined the interviewees' evaluations of their encounters with the police and the courts. In order to do so, I used the model of procedural justice that was developed by Tyler and Lind (1992) as a template. All interview fragments that had been coded were carefully considered in order to investigate whether they related to one of the elements of standing, neutrality or trust. This was done with great scrutiny; fragments were only included under one of the

elements in case they truly fitted the category. I have been careful not to force codes into a certain category, and to be open to new categories arising from the data. One new category was found for evaluations of encounters with the police, which was performance. Three new categories were found for evaluations of encounters with the courts, which were performance, the behaviour of the opponent party, and court procedures and organisation. The interrater reliability of this coding process was high, as explained, which gives confidence in the analysis. I will now explain the model in detail.

First, it was clearly found that perceptions of neutrality and perceptions of standing play a major role when people evaluate their encounter with the criminal justice system. *Standing* consisted of four subcategories, *i.e.* (1) being treated with dignity and respect, (2) respect for rights, (3) concern for needs and (4) social standing. *Neutrality* consisted of three subcategories, *i.e.* (1) absence of bias or prejudice, (2) fact-based decision making and (3) honesty. The results confirm the relational models of procedural justice as for the importance they attach to perceptions of standing and neutrality.

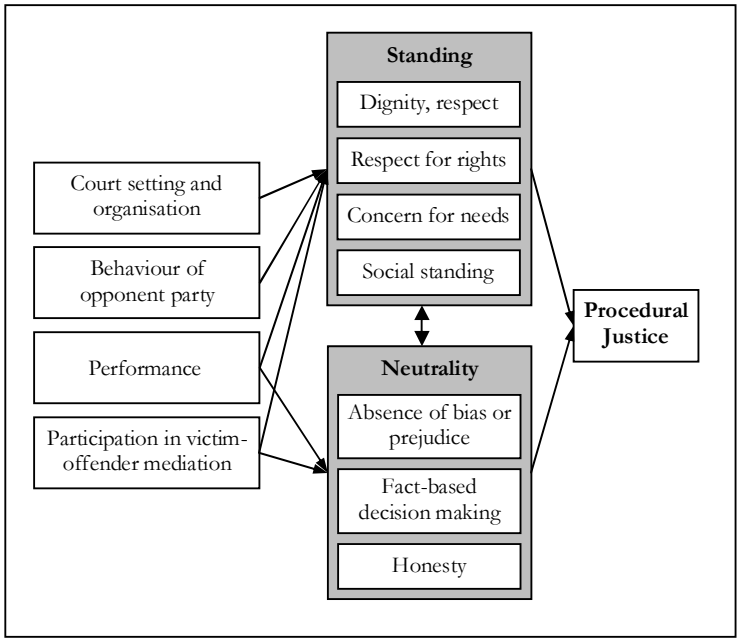

Figure IX-I: A model of perceptions of procedural justice in a criminal law context

Second, the model does not include 'trust', the third traditional antecedent of procedural justice discerned by Tyler and Lind (1992). On the basis of the findings I hypothesise that trust is not an independent antecedent of procedural justice but results from perceptions of procedural justice. Perceptions of trust, the current study's results suggest, are based on perceptions of neutrality and

standing, not on perceptions of authorities' concrete actions. In Tyler and Lind's (1992) conception of trust, trust consisted of two subcategories, *i.e.* concern for needs and consideration of views (which points to participation). Because the results of the current study suggest that concern for needs and consideration of views first of all influence perceptions of standing, I included these under the heading standing. When authorities pay heed to litigants' needs and consider their views, first perceptions of standing seem to be generated, and these in turn seem to influence the degree of trust in the authorities. The same line of reasoning applies to perceptions of neutrality: it appears that being treated in an unbiased way increases trust in authorities. Mark that neither the process-based model of regulation (Tyler and Huo, 2002; Tyler, 2003) nor the group engagement model of procedural justice (Tyler and Blader, 2000, 2001, 2003; Blader and Tyler, 2003a, 2003b) nor Wemmers' (1996) two-factor model of procedural justice include trust as a determinant of procedural justice. As such, the model emerging from the data of the current study supports these previous models' suggestion that trust should not be viewed as a determinant of procedural justice.

Third, various aspects of police and court *performance* were mentioned by the participants when discussing their encounter with these authorities. Concrete examples show that these aspects have an influence on perceptions of standing and neutrality, and therefore have an indirect effect on perceptions of procedural fairness. For example, victims' perceptions of the degree to which the police do all that is in their power to apprehend the offender influence their perceptions of acknowledgement. Therefore I have included performance in the model as an antecedent of procedural justice, albeit that the impact of performance is indirect.

Fourth, the two new categories that were identified, *i.e.* the behaviour of the opponent party and court procedures and organisation, were included in the model. It seems that these two aspects of court proceedings influence perceptions of standing. Victims talked for example about how they were affected by the offender's apparent indifference or by how the offenders' lawyer talked about them. The model contributes to the state of the art that people involved in decision making procedures about crime and punishment are also concerned with the way courts are organised and the way the opponent party behaves in court (though the latter was only found to apply to victims).

Fifth, it was found that there are relationships between some of the antecedents of perceptions of standing and some of the antecedents of perceptions of neutrality, in two directions. There is the example of the victim saying that the fact that the police showed no understanding and did not take her complaints seriously gave her the feeling that she was the one to blame – she literally said that she had felt as if she was the offender. Another example is that when litigants receive little opportunities for voice in court, they get the impression that the judge is prejudiced. These are examples of how perceptions of standing affect perceptions of neutrality. An example of perceptions

of neutrality affecting perceptions of standing is that of the police not investigating the case well because the offender has a criminal record, and the offender for this reason getting the impression that he does not deserve a good investigation. The full list of these relationships can be found below, on page 433. The various relationships are designated in the model by the arrow between standing and neutrality; for the sake of clarity, and in order to show that there may be other relationships than those that I have found, I chose to designate all these relationships with one arrow.

Sixth, the model includes participation in victim-offender mediation as an antecedent of perceptions of standing and neutrality and therefore of perceptions of procedural justice. In chapter eight, it was described that the elements standing and neutrality, which traditionally have been found to influence perceptions of procedural fairness in authority relationships, were also found to be important determinants of perceptions of fairness of victim-offender mediation. Therefore, participation in victim-offender mediation was included in the model as an antecedent of perceptions of neutrality and standing. This last aspect completes the model that is depicted below.

A final word on the model is that prior views probably influence perceptions of procedural justice. There is literature indicating that when evaluating people's perceptions of authorities, their prior views or 'baseline confidence' play(s) a role (e.g. Tyler, 1987; Benesh, 2006; Van De Walle, 2009). I have not physically included the element 'prior views' in the model because the model would become overly complex, but this is an important note to be taken into account.

§2. A model of perceptions of the criminal justice system

The second model that results from the data is the one illustrating how perceptions of the criminal justice system come about. This model is presented in Figure IX-II on the next page. I found two elements to influence perceptions of the criminal justice system and thus trust in the authorities. The first is procedural justice. The second factor is case outcome. The results show that perceptions of outcome fairness cannot be neglected in any model that sets out to illustrate the determinants of perceptions of the criminal justice system.

Procedural justice and outcome fairness in turn influence people's degree of trust in the criminal justice system. The level of trust in the criminal justice system in turn influences the degree to which people feel a need for voice, that is, a need to be involved in or exert control over the criminal proceedings. It was found that people with high levels of trust feel less need to have their voice heard; they rely on the authorities doing their jobs. Those who have little trust in the authorities have more need to thump the table and participate in the proceedings.

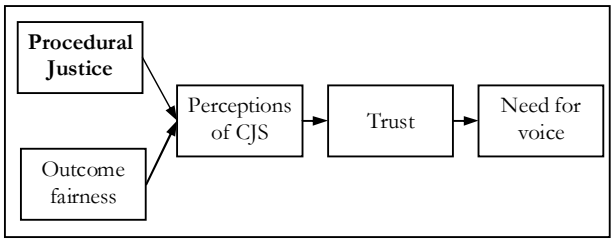

Figure IX-II: A model of perceptions of the criminal justice system

§3. Final model

The two models presented above can be combined into one overarching model; it is presented in Figure IX-III below. I repeat that because of the qualitative nature of the data this is a hypothetical model. It is meant to inspire future research and should be further tested.

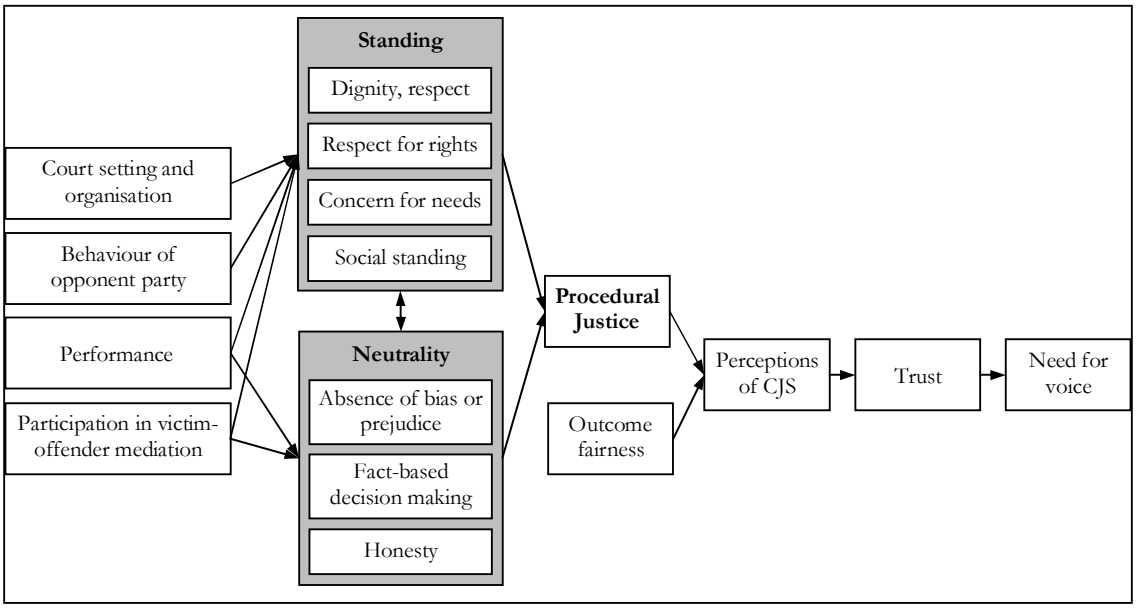

Figure IX-III: Final model resulting from the study

Introduction

In this section, I will explain how the evidence found adds to the state of the art of research on perceptions of fairness resulting from decision making procedures (§1) and to restorative justice literature (§2). The specific context of the current study (*i.e.* a criminal law context), obviously should always be kept in mind.

§1. Implications for the theories of justice

In this first part I will summarise how the findings of the current study contribute to the bodies of literature on procedural justice, fairness heuristic theory and the value protection model respectively.

§1.1. Implications for procedural justice theory

§1.1.1. Concretisation of the elements 'neutrality' and 'standing'

The results of the current study allow making the procedural justice determinants 'standing' and 'neutrality' more concrete. The typical way of gauging the extent to which people feel that they have been treated with respect for the different subcategories of these two elements is by way of single-item scales such as 'How fairly were you treated?' or 'How fair were the procedures used by the police or judge?', answers to which need to be indicated on Likert scales (e.g. Tyler, 1987). The results presented throughout the fifth and sixth chapter provide for insight into which issues in concrete people consider when answering those questions. For example, when they need to answer questions about respect for dignity they may just as well consider if they were offered a drink during the interrogation than if they were treated in a friendly manner. When they are asked whether their rights were respected, they are likely to report not only actual breaches of rights but also perceived breaches of rights. When considering if they have been treated in a non-biased way, offenders may not only consider whether there was a difference in treatment between them and the victim(s) but also between them and their accomplices. These findings demonstrate which issues may be crossing people's minds when answering single-item questions *and* show that the antecedents often are interpreted broader than researchers may think. It is my hope that they will provide inspiration for future research on procedural justice by means of quantitative designs.

§1.1.2. The status of 'trust' in a model on procedural justice

Above I have explained that I believe trust should not be considered an antecedent of procedural justice but rather a consequence. It seems to be the case that perceptions of trust *result from*

perceptions of procedural justice. Whereas trust is still by many considered as a default in any model of procedural justice, the findings of the current study support the models of Wemmers (1996), Tyler and Huo (2002; Tyler, 2003) and Tyler and Blader (2000, 2001, 2003; Blader and Tyler, 2003a, 2003b), which did not assign trust a place as an antecedent of procedural justice anymore either.

§1.1.3. The importance of police/judiciary performance

From the analysis of the interviews I deducted that when victims and offenders are asked in open interviews to consider how they experienced their encounter with the police and the criminal justice system, they come up with issues pertaining to the way these authorities have performed their tasks and duties. This aspect I have called 'performance'. I suggest that a 'police/judiciary performance' category should be included in any quantitative instrument for measuring perceptions of procedural justice in a criminal law context. As I have explained, the findings suggest that perceptions of performance influence perceptions of procedural justice in an indirect way, through the influence they have on perceptions of standing and, to a lesser degree, neutrality.

§1.1.4. The rationale for the importance of standing and neutrality

I have reported that other concerns than merely the concern for one's status in a group are important for explaining the importance of neutrality and standing. Respect for the different sub-elements of standing and neutrality also conveys messages about the likelihood of obtaining certain outcomes and has an influence on victims' and offenders' well-being. For example, it was found that the need for active participation is not entirely independent of concern for outcomes: offenders were found saying that they did not dare speaking their mind to the investigating judge because they feared that that would have a negative consequence on this judge's decision on whether to keep them in preliminary custody. Another example is that of the police meeting victims' and offenders' emotional, practical needs and informational needs: this is important not just because it conveys messages about the degree to which one is a respected group member but especially because being taken care of contributes to litigants' well-being.

§1.1.5. Incompatibilities between different antecedents of procedural justice

It seems to be the case that different antecedents of procedural justice may sometimes conflict. I found for instance a number of respondents indicating that authorities' zeal to be neutral may conflict with allowing victims and offenders to participate in the criminal proceedings. The survey contained a statement asking participants if they would like to be able to talk to the judge in private; several of them said that this is not desirable because the judge would not be able to look at the case

in a neutral manner anymore. This finding points to a possible incompatibility between meeting the need for participation, an element of standing, and absence of bias, an element of neutrality. Another finding was that the fact that the police needs to follow many procedural rules ('respect for rights') may prevent certain needs to be met. This would be a conflict between two antecedents of standing. I have not found thorough reflection in procedural justice literature on the possible incompatibilities between different antecedents of procedural justice other than in the writings of the very first scholars, but it is a most interesting issue as it would be problematic should trade-offs need to be made between the different antecedents.

§1.1.6. Relationships between different antecedents of procedural justice

The current study's results indicate that there are relationships between different antecedents of procedural justice.

a. *The relationship between being treated with respect for dignity and participation/voice*

It was found that people may prefer not to participate in the criminal proceedings when they do not feel respected. One may think of the example of the victim who said that she would not have been as cooperative as she was with the police had they not treated her well, and the offender who said that he would never want to speak to a judge in private because he has never had the feeling that judges behave respectfully towards alleged offenders.

b. *The relationship between being treated with respect for dignity and perceptions of neutrality*

From the testimonies of various offenders I deducted that judges who behave disrespectfully towards an alleged offender in court give a biased impression. A victim who was treated in an impolite manner by the police said that she had felt as if they perceived *her* as the offender. Respectful treatment, then, seems to communicate about the degree to which one can expect the authorities to treat one's case in a neutral manner.

c. *The relationship between being treated with respect for dignity and expectations on performance/trust*

One of the findings was that there may be a relationship between the degree to which one feels treated well by the authorities and expectations on how good these will perform their tasks. People who feel treated well by the police or criminal authorities have higher expectations of these authorities; they are more likely to believe that these people will take responsibility and perform their tasks well.

d. *The relationship between fact-based decision making (the quality of information-gathering) and victim acknowledgement*

It was found that the degree to which the police and the criminal authorities are perceived to do all they can to investigate the case leads victims to feel acknowledged. This in turn contributes to victim recovery and healing.

e. *The relationship between participation/voice and neutrality*

The findings of the current study suggest that the procedural justice antecedents 'concern for need for participation' and 'absence of bias' are related, yet the nature of the relationship is not clear. On the one hand, it was found that people believe that certain forms of participation in the trial (*i.e.* talking to the judge in private) will affect the authorities' neutrality. On the other hand, there were participants who reported that not having the feeling that one received sufficient opportunities to voice one's own opinion in court leads to perceptions of bias. This suggests that perceptions of receiving too little or too many opportunities for participation may intrude upon perceptions of neutrality.

§1.1.7. The conditional nature of being treated with respect for dignity

A number of respondents indicated that some people are more entitled to being treated with respect and politely than others. They said for example that it is more important that the police and judges behave respectfully towards victims than towards offenders. Some explained that people who committed severe crimes are less entitled to receiving respect than those who committed minor crimes. Note that this view was not shared by all respondents. It was also said that those victims and offenders who behave disrespectfully towards the authorities do not deserve to be treated with respect, contrary to those who behave friendly themselves, though others suggested that people who misbehave to the police often were provoked by the police officers themselves. One person indicated that some police officers are more entitled to behave rude than others, namely those who investigate crimes. They should not be as friendly towards citizens as local police officers whose tasks are community-oriented. Receiving respect in other words seems to be conditional; it is not something to which people have equal rights. Remark that only one participant considered the value of neutrality (interpreted as absence of prejudice) to be conditional. It seems, then, that being treated with respect for dignity may be conditional, or something the right to which can be lost, whereas one's case being handled in a neutral manner is not.

§1.1.8. The value-expressive effect of voice

Participants' reasons for exerting voice were found to be both instrumental and non-instrumental. Some victims for example are satisfied with being able to vent their story to a victim support worker or a mediator, others long to be able to have their voice heard in court in order to influence the outcome. Do note that most of those victims wished to ask for the judge to be mild, contrary to what conventional wisdom would lead us to expect. Within the offender group, there were those who said that voicing one's own opinion in court has no use at all and consequently did not plan on speaking and those who despite this belief still said that they would. It was furthermore found that some victims and offenders were dissatisfied because they believed that what they had said in court had not been taken into account. In such case, the positive perceptions of procedural justice resulting from having had an opportunity for participation may be neutralised.

§1.1.9. Limits to the need for active involvement

Procedural justice researchers have always quite unequivocally stated that people who have been involved in decision making procedures are more satisfied about those procedures and about the outcomes of those procedures than those who have not, without taking into account individual differences and structural conditions of certain settings. I found that, at least in a criminal law context, both individual characteristics, such as not being the kind of person to talk in public or being a very emotional person, as well as structural factors inherent to the criminal justice system, such as the presence of an audience in court, may inhibit those people who would like to participate from doing so. Though procedural justice researchers have paid attention to individual differences in justice sensitivity, these kinds of impediments to participation have not been studied sufficiently well, nor has sufficient attention been paid to identifying those circumstances in which the need for active involvement is low. I see a number of impediments to active participation in the criminal proceedings or in the trial specifically, and a number of factors that take away or reduce the need for active participation.

a. *Outcome concerns*

Outcome concerns were found to influence the degree to which people feel a need to participate in the criminal proceedings, or dare doing so. Offenders specifically may refrain from voicing their opinion towards judges out of fear that doing so would be detrimental to the judge's decision. Also, both victims and offenders exhibit a higher need to speak in court when they feel that fact-finding is endangered, that is, when they feel that the authorities have not investigated the case sufficiently well in order for the judge to make an informed decision. Finally, one offender said that he would not

actively participate in the trial because he believes that what offenders say in court is not taken into account anyway, and three offenders regretted having spent time attending the trial and preparing their defence because in the end, at least in their opinion, what they had done and said had made no difference.

b. *Concern for neutrality/a lack of respect*

As explained, concerns for the authorities' neutrality may withhold litigants from participation in the criminal proceedings, thought this example concerns the specific example of talking to the judge in private. The same was found for having experienced a lack of respect from the authorities.

c. *Emotions*

Victims and offenders alike indicated that speaking in court is difficult because one is emotionally tensed at that particular moment, and has trouble finding the words to say what one wishes to say.

d. *The complex nature of the criminal justice system*

Many participants indicated that the criminal justice system is so complex that it is difficult for lays to participate in the criminal proceedings.

e. *Court organisation and procedures*

The specific way in which trials are organised may prevent those litigants who would want to have their say in court from doing so. The presence of an audience in court was named as a main factor impeding active participation in the trial, or at least making it harder to do so. Furthermore, the court setting in terms of the position of litigants vis-à-vis each other and the lack of time for properly speaking one's mind were mentioned.

f. *Having participated in victim-offender mediation (victims)*

A number of victims said that they felt no need to attend the court hearing in their case or to speak in court because the mediation experience had allowed them to close the matter on an emotional or financial level. A satisfying participation in mediation, then, has an impact on some victims' need to attend the trial or to speak in court. This suggests that the need for participation is limited, in that being able to participate at one point of the criminal proceedings for many is sufficient.

§1.1.10. Reflections on the cushion of support

The results of this study gave rise to several reflections on the notion 'cushion of support'. First, it was found that a favourable outcome may mitigate the distress caused by disrespectful treatment and dissatisfaction caused by a lack of opportunities for participation. In other words, a favourable outcome may provide a cushion of support against perceptions of unfair procedures, whereas the notion 'cushion of support' has up till now been used only to illustrate the finding that fair procedures protect against the distress caused by unfavourable decisions. Second, I have suggested that fair procedures do not seem to be able to cushion the blow of unfair outcomes. Offenders who consider themselves not guilty of an offence under no circumstances would accept to be punished. The fairness of the procedure would not provide any protection against being wrongly convicted. Third, I have reflected on the relevance of the concept 'cushion of support' as several respondents said that fair procedures and fair outcomes in their view necessarily go together. No unfair outcomes are thought to be able to result from fair procedures. In case the outcome would be undesirable or considered unfair, there would not *be* a fair procedure to provide for a cushion of support. On the other hand, examples were found of interview fragments suggesting that perceptions of procedural justice do not necessarily lead to perceptions of distributive justice.

The results then leave us with quite some questions on the exact working of the 'cushion of support'. It is necessary to flesh out the issue because the acceptance of judicial decisions is of major importance with a view to a law-abiding society. One explanation for the puzzling findings on the fair process effect could be that this effect hitherto has mainly been studied by manipulating in laboratory studies the variable 'voice'. Typically two groups are exposed to the same outcome; one group has received an opportunity to voice its opinion and the other has not. In that event the fair process effect seems consistent, but the findings reported above, measuring the degree to which *respectful and neutral treatment* can provide for a cushion of support against an unfavourable outcome, are less hopeful.

§1.1.11. A new interpretation of decision control, process control and participation

The findings of the current study allow shedding light on the difference between process control, decision control and participation/voice. Process control, participation and voice are often used interchangeably, which causes confusion and in my view is incorrect. I suggest, first, that process control should be differentiated from participation/voice: whereas the first according to me should be used to designate litigants' power of choosing whether they would like to become involved in the criminal proceedings and their power to choose between different alternatives of doing so, the term participation should be reserved to designate the concrete options for participation. This leads me to

a second point, which is that the relationship between process control and decision control may be quite different than assumed so far. In my view, process control involves decision control. I have suggested to release the term decision control from its association with the outcome of the procedure, after finding that decision control on such things as participating in mediation *is* fundamental to those involved in criminal proceedings.

§1.1.12. The difference between a need for voice/participation and a need for representation

I would like to stress that the fact that some people reject the opportunity to personally voice their opinion in court does not necessarily imply that these people have no need at all for their story to be heard in court. This I argue for three reasons. First, litigants may have had the opportunity to voice their opinion at another occasion. Think for example of mediation, or of the offenders who said that they have no need to speak in court because they have told their story to the investigating judge. Second, some (victims) prefer another person to address the court conveying their arguments and their stories. Lawyers are the most obvious example, but one respondent also said that she felt no need to address the judge because she was happy with the way the public prosecutor had reviewed the facts. Another one suggested that victims should be allowed to appoint e.g. their psychologist to tell their story during the trial. Third, there are a number of factors that may withhold people from participating actively in the trial, as said, even if they would very much like to.

In other words, from the fact that the need for exerting voice oneself in court is not universal, one should not wrongly deduct that the need for one's story to be conveyed to the judge is not universal. In fact it seems that it is, but preferences for the means through which to exert voice differ. One could ask the question whether it would be useful to differentiate between 'need for voice/participation' and 'need for representation', as far as victims are concerned. This question has implications for how to formulate questions on the need for participation in a trial in surveys: victims especially should be asked both whether they would like the opportunity to voice their opinion in court their self and whether they would like to be represented in court. The first question by itself does not suffice to measure the need for voice.

§1.2. Implications for fairness heuristic theory

§1.2.1. What is fair depends on what comes first

The basic premise of fairness heuristic theory – *i.e.* that fairness judgements are based on the information that is available first – cannot be assessed by means of the data of the current study, for the reason that all participants indeed were confronted with procedural fairness information before they learned about the outcome.

§1.2.2. The stability of fairness judgements

Something that *can* be considered is the stance that fairness judgements are stable, that is, that they are reconsidered only when new information is manifestly contradictory. One of the things on which to reflect then is: did participants who considered the process (un)fair stick to this judgement, irrespective of the outcome? Answering this question is difficult, because it was not always clear whether a given participant considered the procedure fair or unfair. Most would mention both positive and negative elements about the procedure. But the discussions on the 'cushion of support concept' do indicate that a fair outcome sometimes provides for a cushion of support against unfair treatment. This would mean that justice judgements are indeed re-evaluated on the basis of the information that comes later.

§1.2.3. Procedural fairness information is more than a heuristic

Fairness heuristic theory states that procedural fairness information is a heuristic for outcome information, rather than something that is intrinsically more important than outcome information for people when making fairness judgements. Yet I found that procedural fairness information has a value of its own, independent of its usefulness for assessing outcome fairness. In particular, procedural fairness information, as the diverse relational models of procedural justice argue, affects people's feelings of self-regard, to the extent that being treated in an impolite or biased manner for example may lead to self-abasement, to people feeling like 'a nobody', as participants expressed. Moreover, procedural fairness information, as described, influences people's levels of well-being. Therefore, downgrading procedural fairness information to nothing more than a heuristic that is only used with a view to assessing outcome fairness and only in case more relevant information (*i.e.* the outcome) is not available does not do justice to this type of information.

§1.2.4. Using procedural fairness information to assess the degree to which authorities can be trusted

Fairness heuristic theory departs from the observation that procedural fairness information is used by those who are subject to a decision by a third party but do not know whether the third party can be trusted to assess its trustworthiness. In case the third party is perceived to behave well and to take decisions in a neutral manner, it is believed to be trustworthy. The current study confirms this stance: participants were indeed found to derive information on authorities' trustworthiness from the way they were treated by those authorities.

§1.2.5. Using procedural fairness information to manage uncertainty

Throughout the analysis of the results it was discovered that there is some value in the assertion that

procedural fairness information matters especially or at least in part because it allows people to reduce or manage uncertainty and as such to (re)gain control over their lives. I found that receiving information in particular is something that allows litigants involved in a criminal trial to manage uncertainty, just like being able to deduct from the judge's behaviour what the outcome of the trial most likely will be. There may then be a difference between being *sensitive* to procedural fairness information and being especially *attentive* to procedural fairness information: people are *sensitive* to being treated with for example concern for their needs in all situations, but there are situations in which they *pay special attention to* procedural fairness information, the reason for which is that this information is helpful for reducing uncertainty.

§1.3. Implications for the value protection model

§1.3.1. Findings on the existence of a moral mandate on the outcome of the trial

The answers provided above in reply to the third research question and its sub-questions suggest that the participants to the current study indeed held a moral mandate instructing that those guilty of an offence should be censured and that the innocent should be acquitted. As such, this finding confirms the applicability of the value protection model's main assertion to those personally involved in a trial, albeit that whereas moral mandate writers have unequivocally written about punishment, I have discerned between censure and sanction as two component elements of punishment.

The goal of the current study was not only to investigate if this thesis is applicable to victims and offenders of crime, but also to find out whether those victims and offenders hold a moral mandate on which way of expressing censure they consider most appropriate. The findings suggest that this is not the case. Quite some respondents when asked which sanction they considered most appropriate came up with a suggestion, but people were generally found to accept other sentences than those that they had in mind without much trouble.

§1.3.2. Defining the moral mandate

I have explained that the literature on moral mandates lacks conceptual clarity. The definitions provided are vague and difficult to apply. The current study has 'tested' the moral mandate concept in a context of criminal law, and on the basis of the findings I would urge that those investigating the premises of the value protection model first of all offer more in-depth explanations of what moral mandates are and, when applying the concept in a context of punishment, differentiate between moral mandates on the level of censure and moral mandates on the level of sanctions.

§1.3.3. A moral mandate on procedure

The results of the interviews point out that possibly, litigants have what I have called a moral mandate on procedure, after the example of the literature on the existence of moral mandates on outcomes. I have created this term in order to point at the fact that participants during the interviews often looked at procedures from a normative point. People often say that the police or the judge 'should' or 'should not'. The finding on the conditionality of standing is a clear illustration of this 'moral mandate on procedure'. This suggestion that people hold moral mandates on procedures needs to be fleshed out, but in my view, these moral mandates were stronger than sentencing preferences or what one would call moral mandates on outcomes.

§1.3.4. The motivated reasoning hypothesis

One of the value protection model's claims is that procedural information is important only to those who after a decision making procedure is finished and the outcome is available find the outcome incongruent with their moral mandate. Yet I have found some participants reflecting on what they had said in court and about what had happened in court before they had learned the outcome. In fact it seems that re-evaluating the decision making procedure is a very common thing to do. The findings therefore do not allow confirming the claim that *only* in case people's moral mandates are not respected, they consider the decision making procedure. On the other hand, the participants in my view did not have moral mandates on the outcome of the procedure, and the value protection model does state that procedural fairness information is valuable to the justice judgements of those who do not have a moral mandate on the issue under consideration. I cannot draw a conclusion on the value of the 'motivated reasoning hypothesis'; it needs further investigation.

§1.3.5. Limits to the moral mandate effect

I have found throughout the dissertation that people are not willing to go to extremes in order to see the outcome they prefer the trial to arrive at to be fulfilled. I found for instance that when they feel disrespected by the police, victims may cease cooperation and thus endanger fact-finding despite the fact that one would expect them, on the basis of the value protection model's assertion, to fully cooperate in order for the offender to be caught and censured/sanctioned. Yet relational concerns sometimes may overrule the concern for the preferred outcome to be reached.

§1.3.6. The importance of the outcome for evaluations of encounters with the criminal justice system

The value protection model is a model asserting that the only factor that people take into account when assessing the outcome of a decision making procedure is whether that outcome matches their

preferred outcome ('moral mandate'). The results of the current study do not allow endorsing this point of view. First of all, above, when answering the second research question, I have explained that the participants to this study needed both a fair outcome and a fair procedure in order to be satisfied about their encounter with the criminal justice system. Second, I found that it is possible for people to be satisfied with an outcome that did not match their exact preference. Third, the mere fact that procedural information was discussed during the second wave interviews provides an indication that not only outcome information matters to people once their experience is finished.

§1.3.7. The importance of moral mandates for explaining other findings

The thesis that people feel that those guilty of an offence should be censured was confirmed by the current study. I have suggested that the moral mandate effect could account for a number of findings of the current study that one would not maybe spontaneously connect to the literature on the value protection model. A first finding that I suggest may be explained with reference to that thesis is that victims feel acknowledged when the police takes the case seriously and tries its best to apprehend the offender, and, likewise, when the public prosecutor decides to prosecute the offender. The fact that such feelings of acknowledgement do not arise in case the offender goes scot-free may be exactly because this moral mandate is not fulfilled.

A second finding that can be clarified with reference to the thesis that people have a moral mandate that the guilty should be punished or at least censured is that the participants to the current study felt little need to interfere in the police investigation of the case. As I have hypothesised, the fact that all participants' offender had been found and arrested by the police means that the authorities are on the right track for fulfilling their moral mandate that those guilty of an offence should be censured, and this may then eliminate the need for personal control over the police investigation. A third finding the significance of which may be illuminated by the moral mandate effect is that procedural fairness may not by definition lead to outcome fairness. Indeed if the outcome is morally mandated – which it is in case an innocent person stands on trial – the procedure does not provide for a cushion of support against a conviction.

§1.4. Suggestions for further research

§1.4.1. Quantitative testing of the model of procedural justice

The model of procedural justice that was presented above has been built on the basis of the findings of this qualitative study. It would be advisable to now subject it to quantitative testing.

§1.4.2. Suggestions for the design of quantitative measurement instruments

Throughout this conclusion I have repeatedly referred to the implications of the findings of the current study for the design of quantitative instruments for measuring perceptions of procedural justice. The reason I did is that (procedural) justice research is conducted mainly by means of quantitative methodologies, and therefore I consider it important to reflect on how to improve the measurement instruments. I have found that the determinants of perceptions of standing and neutrality are much more numerous than thought and sometimes pertain to details such as the public prosecutor's office letters' not being closed decently. On the one hand, this demonstrates that it is impossible to grasp all the different situations that may influence perceptions of procedural justice in one quantitative instrument. But on the other hand, future researchers may broaden the range of antecedents of perceptions of procedural justice to include in surveys on the basis of the findings of the current study.

§1.4.3. The relationships between the antecedents of procedural justice

I have found throughout the study that there are several relations between different antecedents of procedural justice, and have been confronted with findings suggesting that there may be incompatibilities between the different antecedents. I believe a priority of future research on procedural justice therefore should be to investigate these relationships.

§1.4.4. Limitations to having the courage to participate in decision making procedures

On the basis of the current study I propose that future research should be attentive to factors that may prevent those who would like to actively participate in the trial from doing so to a greater extent than studies on the value of participation in decision making procedures have hitherto been. The evidence shows that many considerations cross people's minds when deciding on participation in a decision making process that takes the form of a criminal trial, especially those involved as victim. They see many reasons not to participate in the trial in an active manner. These personal and structural obstructions to participation deserve more attention.

§1.4.5. The relationship between voice and outcome expectations

It has been found that the degree to which one is treated with respect in court communicates about the chance of obtaining certain outcomes. Those who see that the judge treats the offender in a polite manner expect the outcome to be reasonable, whereas those who witness the judge behaving in an impolite manner towards the offender expect the outcome to be severe. Indications were found that the same may be the case for the degree to which one has been allowed to voice one's own

opinion in court, but these indications are not very strong. Therefore I would suggest that research is set up with a view to examining whether it is indeed the case that those litigants who have voiced their own opinion and point of view in court are more likely to expect that the outcome will be favourable than those who have not. In addition, it should be investigated whether the first group is more dissatisfied about the outcome than the second group in case the outcome is unfavourable.

§1.4.6. The cushion of support

Previous research has shown that when those affected by the outcome of a decision making procedure have been awarded a chance to voice their opinion on the matter, they are more satisfied with the procedure and more easily accept the outcome of the decision making process than when they have not been awarded that opportunity. The findings of the current study suggest that other determinants of procedural justice, in particular being treated with respect for one's dignity, do not have this effect. Additional insight into the circumstances in which the cushion of support thesis can be maintained and those in which it cannot therefore is needed.

§1.4.7. The presence of moral mandates in those personally involved in criminal trials

A general recommendation for future research is to examine whether the sentencing preferences of those victims and offenders who are personally involved in a criminal trial match the definition of moral mandates as put forward in the literature. Up till now, observers' point of view have been central; the time is ripe for conducting studies on those directly involved in decision making procedures and to look into how far the concept of moral mandates reaches, not only as concerns the concept 'punishment' but also as concerns the possibility of the existence of a moral mandate on procedure.

§1.4.8. Appeal of judicial decisions

A recommendation in the same line as the previous one is to set up research on the reasons why people involved in a criminal trial appeal judicial decisions or refrain from doing so. That information is crucial for studying the moral mandate effect.

§1.4.9. The need for other procedural manipulations than voice conditions

Those studies that have looked into the importance of fairness information in situations of uncertainty as opposed to other situations have typically manipulated voice conditions to arrive at the conclusion that those in uncertain situations are more sensitive to these manipulations than those in other situations. I suggest that other manipulations are introduced, though I am aware that because

of ethical reasons, it is not evident to manipulate conditions relating to standing or neutral treatment. But it would be highly interesting to know if people also are more sensitive to being treated with respect for the different aspects of standing or neutrality in uncertain conditions than in other conditions.

§2. Implications for restorative justice approaches

In order to assess the relevance of the findings of the current study to restorative justice philosophy, I will base the structure of this part on a 2008 paper by Theo Gavrielides. This author has provided the in my opinion best overview to date of issues that at current cause debate within the restorative justice movement. The findings of the current study allow reflecting on these issues and as such contributing to these debates.

§2.1. The relationship between restorative justice and criminal justice: should they co-exist?

Within the restorative movement, there is ongoing debate between those who believe that the criminal justice system should be replaced by a restorative justice system (which would imply doing away with the criminal justice system) and those in favour of integrating restorative justice within criminal justice. The findings of the current study suggest that litigants themselves are not in favour of doing away with the criminal justice system. All interviewees during the second wave interviews were asked whether they would be in favour of a system that would imply that crimes that have been dealt with through mediation are no longer prosecuted. Most victims were unenthusiastic about the idea of dealing with crimes only through mediation, with the exception of truly minor crimes. They explained that it is vital that crimes are dealt with in court for two reasons. First, not only the hurt done to the victim should be addressed, but also the hurt done to society. This is the task of a criminal court. Second, it is considered important that offenders are faced with a judge, because if not, they are considered to be less likely to learn from their mistake. Note that, as repeatedly said, this does not necessarily imply that a sentence needs to be imposed. Offenders were more enthusiastic about the proposed system, yet some of them too pointed out that there should be a difference between minor crimes and more serious crimes.

In this respect, I should at the end of this dissertation again stress that the victims and offenders who participated in the current study had been involved mainly in serious and often violent crimes, which is important not only with a view to the discussion about the relationship between restorative justice and criminal justice, but also with a view to the ongoing debate about whether restorative justice approaches can be applied to serious crimes. Morris *et al.* (1993) for example in a study on Family Group Conferencing in New Zealand found that those victims that experienced a high level

of distress after the crime were more likely than other victims to say that they felt *worse* instead of better after having participated in the conference (see also Daly, 2005). Therefore, there is doubt about whether it is appropriate to offer restorative interventions in cases of serious crimes. But the current study shows that those victims and offenders involved in serious crime too can benefit from involvement in restorative interventions.

§2.2. The integration of restorative justice within criminal justice: how to co-exist?

Those restorative justice scholars and practitioners that agree that restorative justice should co-exist with criminal justice rather than replace it, have different opinions on *how* the two should co-exist. The question to be dealt with is whether restorative interventions should be additions to court adjudication or alternatives to court adjudication, that is, whether offenders of cases that have been dealt with through a restorative intervention should still be brought before a court of law and whether in that case the outcome of the restorative intervention should be communicated to the officials judging the case. The interviewees' normative views on the administration of justice suggest that only cases involving minor crimes can be diverted from the criminal justice system. First of all, as said, there is a need for offenders to still be censured by an official body, even if a restorative intervention has been satisfactory. Second, participants were found to highly value a judge to acknowledge their efforts for mediation, either by the judge mentioning that the parties participated in mediation (or at least that one of them was willing to do so) or by the judge taking the agreement that resulted from mediation into account in his decision. In these two observations lies an important argument for integrating restorative and criminal justice into one system, or at least for safeguarding that there are channels of communication between the two systems.

§2.3. The definition of restorative justice: outcome-based or process-based?

The discussion within the restorative justice movement on whether restorative justice should be defined with a focus on outcome or with a focus on procedure was spelled out above (see chapter one). What became clear from the current study is that justice is a multidimensional concept. People are sensitive both to being able to participate in the proceedings and being treated with respect for standing and neutrality on the one hand and to outcome fairness on the other hand. Given this and a number of other findings, I suggest that future researchers that wish to formulate a definition of restorative justice take two things into account.

First of all, I believe that a definition of restorative justice needs to stress both the participatory nature of restorative programmes and the fact that the aim of restorative interventions is to repair the harm. As for the first component, Bazemore and Walgrave's definition does not include a reference

to the value of participation, which is indefensible given the central place of the concept in restorative justice philosophy, and the definition of Marshall, though it is the one commonly regarded as impersonating the process-based view of restorative justice, in the end only speaks about 'collectively' resolving the crime, which still is rather vague. Another remark pertaining to this first component is that in my opinion those programmes that deal exclusively with victims or offenders are not to be labelled restorative justice programmes.

As for the second component, it should be defined whose harm exactly should be repaired. I would suggest that definitions need not explicitly include the harm done to society, because the participants said that the hurt done to society is something that should anyway be dealt with in court.

Second, I suggest that any definition of restorative justice should include a reference to the voluntary nature of participation in restorative programmes. The definitions by Marshall, Bazemore and Walgrave and Zehr do not specify that restorative programmes operate on a voluntary basis. Though I am aware that the criminal justice system always figures on the background and participation of offenders therefore seldom is completely voluntary, I do adhere to the principle that they can never be obliged to participate in a restorative programme (see also De Mesmaecker, 2011). Likewise, I am aware that victims too may feel pressured in many ways to participate in a restorative programme, but what I want to point at is that they should never be pressured into participation by those offering the restorative intervention.

§2.4. The place of punishment in restorative justice: alternative punishments or alternatives to punishment?

A fourth topic of discussion among restorative justice scholars is the issue of whether the outcomes of restorative interventions are alternatives to punishment or in fact merely alternative forms of punishment (see also De Mesmaecker, 2010b). The painfulness of the outcome for the offender according to many is the decisive factor. Some from an ethical point of view argue that these outcomes are not punishments because they are not *intended* to be hurtful; others take a more pragmatic point of view to assert that the outcomes of restorative interventions still place a burden on offenders and therefore are punishments. The results of the current study do not allow thorough reflection on this specific issue. One relevant observation might be that none of the participating offenders considered participation in mediation as a punishment. They did point out that it was demanding to face their victims, and that it was not easy, but recall for example that a number of offenders did explicitly use the word 'punishment' to describe the time that they had spent waiting for their trial. None of them used this word to describe victim-offender mediation. However, this is all that can be said on the issue on the basis of the current study.

§2.5. The flexibility of restorative justice's working principles

Restorative justice interventions are based upon three core working principles that are widely agreed upon. These are the neutrality of the mediator/facilitator, the confidentiality of the programmes, and the voluntariness of participating in the programmes. Yet as Gavrielides indicates, there is some discussion on how strict these values should be interpreted. For instance, recall from the first chapter that some argue that it should be possible to oblige offenders to take part in a restorative programme. On the basis of the findings of the current study I would suggest that the first and third of these values should be conceived of in a very strict manner. Feeling coerced to participate in mediation is detrimental with a view to perceptions of procedural justice, and so is having the feeling that the mediator is not neutral. The second principle is more problematic: a number of respondents problematised the fact that what is said during mediation cannot be communicated to judges in case one of the parties does not agree to it, and some interviewees participated in mediation with the main goal of conveying information to the judge. In such cases, strict adherence to the principle of confidentiality may cause frustration.

§2.6. The stakeholder circle

Though as said in the first chapter restorative scholars tend to point to the importance of involving community members in restorative interventions, some disagree, arguing that only the direct victim(s) and the offender(s) should be involved, and others propose to broaden the circle and to also invite officials (such as judges and prosecutors) and supporters other than family or friends (such as victim support workers). The findings of the current study suggest that it is indeed a good thing to include more people in restorative interventions than only the victim and offender, because censure is so important to victims. Enlarging the circle of people who attend a restorative intervention may contribute to meeting this need for censure.

Expressing censure is something that is usually expected from the criminal justice system. Yet in case more people are involved in a restorative intervention, censure can also be expressed there, and in this case, the censure expressed in the informal setting and the censure expressed in the formal setting can mutually reinforce each other. One may think of Braithwaite and Parker's (1999) theorising on 'the justice of the people' bubbling up into 'the justice of the law'. It seems indeed that litigants have a stronger feeling that justice is done when the justice resulting from the informal, restorative intervention and the justice resulting from the formal intervention are combined.

SECTION IV. PRACTICAL IMPLICATIONS OF THE FINDINGS

Introduction

In this last section, I will in the first place shortly reflect on the implications of the findings of the current study for the procedure of victim-offender mediation (§1). Next, I will spend attention to how trials can be conceptualised in such a way that there is room in court for validating the effort that litigants have done in an informal conflict resolution setting (§2).

§1. Implications for the victim-offender mediation procedure

Throughout chapter eight, I have given an extensive overview of the merits that the participants to the current study ascribed to mediation and of their reservations about mediation, and have explained how these relate to perceptions of fairness. This overview is highly relevant for practice because it allows making a number of concrete recommendations on how to conduct victim-offender mediation. These relate to the organisation of mediation services and their relation to other services in the field on the one hand and to the procedure of mediation on the other hand.

As for the organisation of mediation services, there are great differences between and in countries and organisations, as observed by Peters (2000). There are for example different approaches of the relation between restorative programmes and the criminal justice system. I have elaborated on this topic above, when discussing the implications of the findings of the current study for restorative justice philosophy. I have recommended, on the basis of the needs that were expressed by those participating in the current study, that the criminal justice system and restorative justice should exist next to each other and reinforce each other – below, in part §2 of this section, I will take up this issue again, this time looking at how this process of mutual reinforcement could be conceptualised at the level of sentencing specifically.

As for the procedure to be followed, the main recommendations to be made on the basis of the findings of the current study relate to two things, namely the vital nature of the three working principles of mediation (neutrality, confidentiality and voluntariness) and the importance of informing and thoroughly preparing the participants. Concerns about and breaches of each of the three working principles have been spontaneously reported by the interviewees, which shows that they indeed have great importance in the daily practice of mediation. The critical value of information too has been elaborately discussed in chapter eight.

I have considered each of these two issues on procedure in detail above, and these have been identified as preconditions for conducting high-quality mediation processes by previous researchers. Therefore I would like to focus my attention at this point on an issue that I have not yet touched

upon and that makes a distinct contribution to the literature. It relates to the discussion on whether mediation practices should be conducted using a procedure that was identified as 'humanistic' or 'dialogue-driven' or rather one that has been called 'controlling' or 'settlement-driven'.

Restorative justice as said is a philosophy, an attitude, a way of thinking, a description of an ideal. The restorative literature therefore is highly normative. The scholars debating how the procedure of victim-offender mediation and other restorative interventions should be conducted too take a highly normative view on this issue. The founders of restorative approaches, such as Umbreit (1997), adamantly reject a controlling or settlement-driven style of mediation, arguing that the empowerment of the parties and the dialogue between them should be the focus of any restorative intervention, not just reaching an agreement. In my view, the restorative advocates who mingle in this discussion too often take a paternalistic position, because their standpoint is to tell those who participate in a restorative intervention what it is that they should want and be happy with. Restorative advocates criticise the criminal justice system on the ground that it assumes that justice is something that can be imposed on people, arguing that the concrete parties to the crime should be allowed to have a say in what justice is or how it can be done. But I believe that restorative advocates do not sufficiently adhere to the principle that justice is not something that can be imposed on or done to people themselves. They all too often violate that principle themselves, because they too take a paternalistic position, prescribing what people should want. They disapprove of the fact that the criminal justice system imposes a framework of what justice is on the parties to a conflict, but in my view do the same. They have benevolent intentions, but on the continuum from directiveness to flexibility take a position that is rather directive. They prescribe how restorative conferences should be organised and which goals these should serve, but too often lack empirical material to support their stances. Contradictory evidence is seldom stressed or elaborated on.

The Flemish practitioners on the other hand do consider it their task to organise mediation in such a way that it meets the needs of the specific parties involved, as I learned from the focus groups. In case the parties to a conflict wish to keep the communication between them limited to exchanging only the information that is necessary in order to reach an agreement on the compensation of damages, so the mediators said, they organise the mediation process in such a way that it meets this need. Sometimes, it was explained, the parties to a conflict feel no need at all for communicating with the other party on personal matters such as how the crime has affected them, but do highly appreciate the opportunity of arranging the compensation of damages with the other party outside of court.

However, there are also practitioners using scripts to develop the mediation procedure, that is, scenarios that are written down and that are strictly adhered to by the one facilitating the restorative

intervention. This is a model that became known as the 'real justice' model (Wachtel, 1997). It is the model that marked the installation of the Wagga Wagga conferences in Australia; these were devised, as Wachtel describes, as "*carefully orchestrated* emotional encounter[s] among young offenders, their victims and their respective friends and family (Wachtel, 1997: 23, my emphasis). The Wagga Wagga conferences are scripted in the sense that there is little flexibility in e.g. the questions to be asked, the seating arrangements and the order in which the participants speak (Zinsstag *et al.*, 2011). Obviously, it is advisable that restorative interventions do follow an orderly sequence of events, as Zinsstag *et al.* (2011) write with respect to the New Zealand Family Group Conferences model. But this is different from using a strict script that does not allow adapting the procedure to be followed, neither before nor during mediation, to the needs of the participants.

The great variation among the participants to the current study would lead me to advice, with respect to the Belgian practice of victim-offender mediation for redress that I studied, not to go too far in using such scripts. They are not currently used by the Suggnomè mediators and I would say that this reflects good practice. The list of reasons for participating in mediation as can be found in annex 7 (annex 6 for Dutch readers) and that was described in chapter eight indeed shows that victims' and offenders' needs are various and that they consequently 'use' mediation for different purposes. Whereas some use mediation to arrange the damages with the other party and wish to keep it limited to this, others attach great importance to being able to tell their story to the other party and/or to repairing the relationship with the other party. Given the vital importance of those participating in a restorative intervention not feeling forced to participate and of the principle of impartiality of the mediator, I would argue that these specific needs shape the procedure to be followed, not a normative view on how the procedure should be conducted. Indeed, in case a mediator puts pressure on a party who wishes merely to arrange compensation to participate in an elaborate procedure including talking about personal matters, the party that was pressured may well leave the process dissatisfied and his/her perception of fairness may be severely affected by this treatment. Similarly, a mediator overtly showing more appreciation for one party's goal than for the other party's motivations for participating may lead to perceptions of neutrality being reduced.

Hence my argument that it is not up to restorative scholars or practitioners to prescribe which form of mediation is better, unless on high-quality empirical grounds. But even then, it is the participants to each and every unique restorative intervention that should agree on how to conduct the process. This will depend on *their* personal and unique needs. It will depend on the topics that they would like to discuss, that is, on how far they wish to go in discussing the circumstances of the crime and their personal experiences and feelings. If they wish to conduct the process such that it is limited to arranging the settlement of the damages, there should be no impediments on doing so.

One could object that this approach would lead to restorative interventions being instrumentalised and used for other purposes than intended. Yet I argue that this would not be the case, as these programmes and interventions were designed so as to meet the needs of those hurt by crime, and it would be these people's needs that determine the course of the mediation process, not those of criminal justice officials. The flexible nature of restorative interventions is highly valued by litigants, as I learned from the focus groups and from Van Camp's (2011) study, and therefore it should be possible for the participants themselves to settle on how extended the procedure should be and where its focus should lie. The 'choice' between which model to apply in any specific case is up to the parties involved, not the mediator or facilitator, provided of course that the basic working principles of mediation are respected. Obviously, the mediator/facilitator should take over in case (s)he remarks that there is a strong power imbalance between the parties, for example. Also, there will be situations in which the goals of the parties conflict, in which case a 'default' model of mediation may be helpful and provide for some guidance, and to some people the fact that there is a default model will provide for emotional safety. Yet to the degree possible and to the degree that the participants to a restorative intervention appreciate being able to have a say on the procedure of mediation, I believe we should be open to adapting the procedure of mediation to the needs of those involved, which in turn will positively affect perceptions of fairness.

§2. Continuing and validating the communication between the parties in court

Above I have discussed the position of restorative programmes vis-à-vis the criminal justice system. Departing from the needs of those involved in criminal proceedings as victim or offender as they have come to the fore in the current study, I would argue that it is important to install channels of communication between restorative justice and criminal justice. I refer to two particular needs that were found in order to legitimise this stance. The first is victims' and offenders' need for judges to validate victims' and offenders' efforts for participating in a restorative programme in court and/or in the judgement. The second is victims' need for public censure of the offender.

Translating this finding to the restorative literature, the model that the respondents to the current study endorse is Van Ness' (2000) dual-track model. This is a model "in which the criminal justice and restorative justice systems operate side-by-side with occasional cooperation" (Van Ness, 2000: 13); it is a model providing for "designated passages between [the criminal justice and restorative justice systems] for parties to move back and forth" (Van Ness, 2002a: 145, 2002b).

Focusing now on the issue of validating victims' and offenders' engagement in mediation, arguing that channels of communication should be provided for in order to meet the wish for the communication that took place on a micro level to be communicated to the judge is one thing, but

the next question should obviously be how to go about in order to meet this need for acknowledgement in practice. The question is which place can be awarded to the parties' efforts and the agreement resulting from the mediation in the criminal procedure (Aertsen and Beyens, 2005).

One level on which to validate victims' and offenders' engagement in mediation would be the trial itself. Above I discussed Lochs' (2009) study involving Belgian magistrates, which shows that judges do not consider the courtroom an appropriate place for continuing the communication between the parties or 'redoing' the mediation, and numerous authors (e.g. Arrigo and Williams, 2003; Kool and Moerings, 2004) have in this respect pointed to the near impossibility of installing open and honest communication between the parties to a conflict in the tensed and highly formalised atmosphere of a courtroom. Still, it does not seem that the fact that courtroom procedures impede communication between the parties to the crime was experienced as problematic by the participants to the current study. Only one victim spoke about a need to address the offenders personally in court. None of the respondents said that they regretted not having had the opportunity in court to address the other party in person. Respondents were much more likely to find fault with courtroom procedures for not allowing them to communicate their opinion on the facts and the societal reaction they deem appropriate to the judge to the degree that they would have liked to. It does not appear that victims and offenders who participated in victim-offender mediation feel a need to 'redo' the mediation in court. However, what they do ask is for judges to show an interest in their experience with mediation, to enquire how they have experienced it, and to show appreciation for their efforts.

Of course, in daily practice channels for communication already exist. As for experiences with mediation, litigants can, in person or through their lawyer, talk about the experience when it is their turn to address the judge. Yet the channels for communication are marked by their formalistic nature; they do not allow much room for the parties to convey personal impressions and experiences to the judge. Communication (needs to) remain(s) limited to the exchange of information on e.g. arrangements for damage or merely the message that one has participated in a restorative intervention; moreover, the existing channels do not truly set in motion a process of communication, of dialogue. They allow for a party to inform the judge, but do not install two-way communication.

What is needed, it seems, is channels of communication that allow people to talk about what the mediation experience has meant for them on a personal level, to allow room for their subjective interpretations and understandings, for the experience that took place in their lifeworld – using Habermas – to be discussed at the system level. Referring to the terminology introduced by Habermas, Braithwaite and Parker (1999: 116) have written about "the lifeworld affecting law from below". It means to establish communication in court that is not limited to judges 'congratulating' people with what they achieved through a restorative programme, but also providing these people

the chance for communicating about what the experience of participating in the programme has meant for them and as such installing two-way communication.

A first difficulty with this approach is that it may only be useful, with a view to enhancing perceptions of justice, to follow this strategy of bringing up mediation during the trial in case mediation has been successful. 'Successful' does not necessarily imply that an agreement was reached; what I mean is that in case the mediation process ended with disappointment or in case one of the parties refused to participate, it may be less desirable to address it during the trial, because it may generate resistance in the party that was dissatisfied or that refused to take part.

A second difficulty with this approach is the attendance of trials by victims. Neither victims nor offenders are obliged to attend the trial, and many victims in particular choose to remain absent from court. In such case, validation of the litigants' experience obviously cannot be accomplished at this level. But in case they *are* present, bringing up mediation during the trial will likely enhance perceptions of justice.

A second level on which validation of efforts to participate in mediation and of the mediation agreement could take place is the judgement. I found that people highly appreciate the judge referring to the agreement that resulted from mediation in his judgement; one respondent was even upset about the fact that the judge only mentioned the presence of an agreement in the last sentence of her judgement. Going back to Lochs' (2009) study, many of the judges interviewed for the sake of that study did not respect the legal obligation to mention the presence of a mediation agreement in the file in their judgement – some were not even aware of this obligation. Therefore it seems that the first main concern should be to get judges to by default acknowledge parties' mediation experience in the judgement. Yet again a problem may pose, which is that, as I have experienced throughout conducting the current study, not all litigants get their hands on the judgement. Some never take the effort of going to court to ask for a copy of the judgement, others do not even know where to go in order to learn the judgement, and others are informed by their lawyer but never personally read the judgement.

Concluding, an important task lies ahead for court magistrates and staff if they want the credibility of their profession to increase. To litigants, the trial is an event that follows the restorative intervention – unlike the criminal justice professionals, litigants themselves are more likely to see the trial as an addition to the restorative intervention rather than vice versa. They do not break up the different events; to them, it is a holistic experience. For this reason it is important that the criminal justice professionals acknowledge what has happened before the trial, and I suggest that in order to do so, it would be a good start if judges would refer to the fact that the parties participated in mediation and if applicable mention the presence of an agreement in the file during the trial and in

their judgement. As this way not all victims and offenders may be reached, providing copies of the judgement to the parties involved in a trial automatically would be a good additional strategy, provided that services are set up to offer support to those who do not understand the judgement. An interesting avenue for future research would be to set up action research in order to study the viability of a suchlike approach.

SECTION V. FINAL NOTES

This dissertation aimed to provide insight into the factors that determine the perceptions of fairness of victims and offenders involved in a criminal trial and into what they want from the police and the courts. An important movement that has pointed to victims' and offenders' dissatisfaction with criminal justice is the restorative justice movement. Restorative scholars and practitioners have argued that to litigants involved in a criminal trial, what is important is that they are involved in the procedure through which the case is dealt with, and has substantiated this claim with reference to procedural justice theory. An empirical evaluation of how victims and offenders who were involved in a criminal trial assess this experience and of how they experienced participating in a restorative intervention (*i.e.* victim-offender mediation for redress) has allowed gauging the extent to which procedural justice theory indeed can be considered a normative basis for restorative justice philosophy. The results suggest that procedural justice theory is a theory that restorative justice researchers indeed can take recourse to in order to substantiate their claim that the direct stakeholders to a crime value being involved in the proceedings that are set up for dealing with these crimes, providing that they keep in mind that procedural justice theory cannot explain all of the positive and negative features of restorative interventions that have been identified by the current and previous studies and that there are limits to the need for participation.

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ANNEXES

Annex 1: Details on participants

REMOVED FROM THIS VERSION FOR PRIVACY REASONS

Annex 2: Interview guide (Dutch)

Eerste interview: vóór zitting en eventuele herstelbemiddeling

Openingsvragen/inleidingsvragen

- Voorstelling onderzoeker en onderzoek en introductie tot gesprek
- Kunt u mij een kort relaas van de feiten geven? Wat is er precies gebeurd?

Transitievragen

- Kunt u uw houding ten aanzien van justitie (rechtbanken, rechters, magistraten), deze van vóór de feiten, omschrijven? Hoe stond u er toen tegenover?
- Hoeveel wist u over justitie en over de werking van rechtbanken op het moment van de feiten?
- Is de werking van justitie een onderwerp dat u altijd geboeid heeft of eerder iets waar u ver van af stond? Zijn er in uw directe omgeving mensen die reeds met de rechtbank in contact zijn gekomen?
- Vond uw allereerste contact met politie en justitie plaats naar aanleiding van de feiten waarover we het vandaag zullen hebben, of kwam u reeds eerder in contact met politie of justitie?
- (Indien reeds ervaring: Wanneer en voor welke feiten kwam u voor het eerst in contact met politie of justitie? Hoe hebt u dat contact ervaren, en heeft dat contact uw beeld van/positie ten opzichte van politie en justitie beïnvloed?)

Sleutelvragen

Politie

- Laten we terugkeren naar het contact met de mensen van de politie in deze zaak. Wie waren precies betrokken bij dat eerste contact? Op welke manier, wat was hun rol?
- Kunt u verwoorden hoe u dat contact ervaren heeft? Hoe voelde u zich bij dit contact, kan u zich herinneren welke gedachten bij u opkwamen op het moment van dat eerste contact? Zijn er zaken die u hebt gezien, gehoord, die u opmerkelijk vond?
- Wat vond u van het gedrag en de houding van de agenten? (enkel indien niet spontaan aangehaald)
- Hebt u nog contact gehad met de politie na de dag van het verhoor? Hoe zijn deze latere contacten verlopen?
- Wat is het volgende dat u over de zaak gehoord heeft, na het laatste contact met de politie?

Herstelbemiddeling

- Waarom bent u ingegaan op het aanbod tot herstelbemiddeling?
- Hebt u eerdere ervaring met herstelbemiddeling? Wist u wat het was, kende u het concept?
- Wat verwacht u van de herstelbemiddeling? Hebt u bepaalde bezorgdheden over die herstelbemiddeling?
- Wat vond u van de herstelbemiddelingsprocedure tot nog toe?

Rechtszitting/procedure

- Het volgende zal dan de rechtszitting zijn. Wat vindt u van het feit dat deze zaak voor de rechtbank wordt gebracht?
- Wat zijn uw verwachtingen over de rechtszitting?
- Zult u de rechtszitting zelf bijwonen? Waarom wel/niet?
- Zou u graag de tijd krijgen in de rechtbank om zelf iets te zeggen?
- Hebt u voor zichzelf een beeld van wat de meest wenselijke gang van zaken in de rechtbank zou zijn? Hoe zou de rechtszitting moeten verlopen opdat deze u tevreden zou stemmen? Wat is uw allereerste bezorgdheid wanneer het het verloop van de rechtszitting betreft?
- Voelt u een zekere angst voor bepaalde aspecten van de rechtszitting?
- (in geval van eerdere ervaring) Wat vindt u van de procedures en gebruiken op een rechtbank? Is er iets waarvan u zegt, dat zou men mogen veranderen?
- Hebt u het gevoel dat de mensen met wie u te maken kreeg, zich tegenover u steeds op een passende manier gedragen hebben?
- Terugkijkend op de hele procedure tot nog toe, welke gebeurtenissen staan het meest in uw geheugen gegrift? Waarvan was u het sterkst onder de indruk?
- Zijn er momenten geweest tijdens de procedure tot nu toe waarop u dacht, ik wou dat ik meer betrokken werd bij alles?
- Kunt u mij vertellen of uw houding ten aanzien van justitie gewijzigd is sinds de feiten? In welke zin? Kunt u daarvoor concrete aanleidingen aanduiden?

Moral mandate

- (Enkel voor slachtoffers) Bent u van mening dat de verdachte(n) in deze zaak moet(en) bestraft worden? Zo ja, welke straf acht u het meest gepast?
- (Enkel voor verdachten) Wat zou voor u een rechtvaardige uitspraak zijn? Bent u van mening dat u moet bestraft worden? Zo ja, welke straf acht u het meest gepast?

- Hoe zou u er zich bij voelen wanneer de rechter afwijkt van de uitspraak/straf die u zonet formuleerde? Hoe belangrijk is het voor u dat de uitspraak van de rechter aansluit bij uw eigen idee over de uitspraak/straf, zoals u dit net hebt geuit?

Stellingen

- Stelling 1: Het bekomen van de juiste straf is wat mij in deze zaak het meest bezig houdt.
- Stelling 2: Ongeacht wat de wet hierover zegt, vind ik dat de enige rechtvaardige straf in deze zaak, de straf is die ik zelf in gedachten heb.
- Stelling 3: Als ik me alles bij elkaar eerlijk behandeld zal voelen in deze zaak, zal ik me ook kunnen verzoenen met een vonnis dat eigenlijk niet overeenkomt met de uitspraak die ik het liefst had verkregen.

  (Extra uitleg voor slachtoffers: Kunt u zich voorstellen dat uw idee over de gepaste straf zou veranderen mocht de politie u onrespectvol behandeld hebben? Zou dat uw opinie over de gepaste straf beïnvloeden? Zou u, om het zo te zeggen, een groter gevoel van revanche hebben? Extra uitleg voor daders: Kan u zich voorstellen dat u de straf beter zou kunnen aanvaarden als de politie u goed had behandeld, of omgekeerd, dat het moeilijker zou zijn de straf te aanvaarden als de politie u slecht had behandeld?)
- Stelling 4: Het maakt mij niet uit hoe de mensen van politie en justitie zich tegenover mij gedragen, als ze er maar voor zorgen dat de dader bestraft wordt. (slachtoffers)/Het maakt mij niet uit hoe de mensen van politie en justitie zich tegenover mij gedragen, als ze er maar voor zorgen dat ik niet te zwaar bestraft wordt. (daders)

Besluitende vragen

- Is er iets wat u gedurende het interview binnenviel, waar u nog niet eerder bij stilgestaan had?
- Hebben we iets over het hoofd gezien tijdens ons gesprek?
- Zijn er zaken die u mij nog zou willen vragen?

Tweede interview: na zitting en eventuele herstelbemiddeling

Openingsvragen/inleidingsvragen

- Introductie tot gesprek
- Als ik u zou vragen hoe deze ervaring nu voor u is geweest, hoe u deze evalueert, waar zou u dan beginnen?

(Geen transitievragen, aangezien de volgorde dit keer sterk afhing van het antwoord op de openingsvraag)

Sleutelvragen

- Kunt u verwoorden hoe u de contacten met de mensen van justitie sinds ons vorige gesprek hebt ervaren, indien deze er zijn geweest? Hoe voelde u zich bij die contacten, kan u zich herinneren welke gedachten bij u opkwamen op die momenten? Zijn er zaken die u in het bijzonder zijn opgevallen, die sterke gevoelens bij u hebben losgemaakt?
- Wat vond u van de herstelbemiddeling? (indien deelgenomen)
- Wat vond u van de rechtszitting? (indien aanwezig geweest)
- Kunt u de rechtszaal eens omschrijven? Wat vindt u van een rechtszaal? Wat is u daarvan bijgebleven aan indrukken?
- Was u voldoende voorbereid op de rechtszitting? Hoe hebt u zich voorbereid?
- Ik wil u graag vragen om enkele personen aanwezig op de rechtszitting in uw eigen woorden te karakteriseren en omschrijven.
    - Openbaar ministerie
    - Rechter
- Hebt u het gevoel persoonlijk invloed gehad te hebben op het verloop van de rechtszitting, op de presentatie van het bewijsmateriaal en (in geval van veroordeling) op de uitgesproken straf?
- Heeft het verloop van de rechtszaak uw verwachtingen beantwoord?
- Hebt u op een bepaald moment gedurende de procedure de wens gevoeld om bepaalde beslissingen die werden genomen, te bediscussiëren met de verantwoordelijken?
- Met welk aspect van het rechtsgebeuren was u het minst tevreden? Wat is de grootste teleurstelling geweest? Wat vond u het meest frustrerend? Wat vond u het meest positief?
- Hebt u het gevoel dat de mensen met wie u te maken kreeg, zich tegenover u steeds op een passende manier hebben gedragen?
- Wat vindt u van de uitspraak van de rechter?

- (indien nog niet spontaan aangehaald) Hebt u het resultaat van deze zaak ergens mee vergeleken? Waarmee hebt u vergeleken, wat was de maatstaf?
- Hebt u de uitspraak besproken met anderen? Heeft de reactie van deze anderen uw mening over de uitspraak beïnvloed?

Besluitende vragen

- Onderzoek wijst uit dat mensen die een ervaring hebben met justitie, een minder positief beeld hebben van justitie dan mensen die nog geen contact hadden met justitie. Hoe zou u dit, vanuit uw eigen ervaring, verklaren?
- Welke lessen hebt u getrokken uit uw ervaring? Welk advies zou u, wetende wat u nu weet, geven aan iemand die eenzelfde ervaring te wachten staat?
- Gesteld dat het hele gebeuren opnieuw zou plaatsvinden, is er iets dat u anders zou doen of wat u op een andere manier zou aanpakken? Zou u andere betrokkenen iets anders willen zien aanpakken? Wat kan beter aan het hele rechtsgebeuren?
- Ik vroeg u in het vorige gesprek naar uw houding ten aanzien van justitie (rechtbanken, rechters, magistraten) vóór de feiten en, op het moment van ons gesprek, naar de evolutie ervan. Kunt u mij vertellen of uw houding ten aanzien van justitie ondertussen nog gewijzigd is? In welke zin? Wat zijn de redenen voor die gewijzigde houding, kan u die aanduiden?
- Gesteld dat u het onderling met de andere partij had kunnen oplossen, buiten de rechtbank om, had u dat dan gedaan? Zou u dat een goed systeem vinden?
- Is er iets wat u gedurende het interview binnenviel, waar u nog niet eerder bij stilgestaan had?
- Hebben we iets over het hoofd gezien tijdens ons gesprek?
- Zijn er zaken die u mij nog zou willen vragen?

Annex 3: Interview guide (translated to English)

First interview: before trial and mediation

Opening questions/introductory questions

- Introduction of the researcher and the study
- Introduction to the interview
- Can you tell me what exactly has happened?

Transition questions

- Can you describe how you felt about the criminal justice system before the facts? What was your opinion about the criminal justice system, judges, magistrates and courts?
- Were you familiar with the criminal justice system before these facts? Did you know anything about the organisation of courts and the criminal justice system?
- Are you a person who has always been interested in the internal workings of the criminal justice system, in the operation of courts and the like? Is it a topic that interests you? Are there any people close to you who have had an experience with the criminal justice system?
- Did you have any prior experience with the police and the courts before these facts took place?
- (If so: can you tell me something about that experience? When did it take place, which were the facts, and did you have contact with the police and/or the courts? How did you experience this contact, and did it change your opinion about these actors?)

Key questions

Police

- How did you experience the police's intervention in this case?
- How did the police become involved in the case? How did you experience that contact? Can you recall if there was anything that you have seen or heard or that they did that you found remarkable?
- Did you feel that the police staff behaved well towards you? (only if not discussed spontaneously)
- Did you have any subsequent contact with the police? How did you experience that contact?
- Has your opinion about the police changed as a consequence of your own experience? If so, in what sense? Can you identify any specific reason(s)?

Mediation

- What exactly motivated you to participate in mediation?
- Do you have any prior experience with mediation? Were you familiar with the concept?
- What do you expect from mediation?
- How did you experience the mediation process so far?

Legal proceedings

- So far, have you ever felt like you would have liked to be involved in the criminal proceedings to a greater extent?
- Has your opinion about the criminal justice system changed as a consequence of your own experience? If so, in what sense? Can you identify any specific reason(s)?
- Do you feel like all the actors you have met so far have behaved well towards you?
- Looking back on the procedure so far, which events have impressed you most?

Trial

- What do you think about the fact that the case will be brought to trial?
- What do you expect of the trial?
- Will you attend the trial? (Why (not)?)
- What is your first concern relating to the trial?
- Would you like to have the opportunity to speak in court?
- (only in case of prior experience) What is your opinion about courts' organisation, about the proceedings? Are there any aspects of a trial that you believe should change?

Moral mandates

- (Victim question) Do you feel that the suspect(s) in this case should be punished? If so, which punishment exactly do you consider the most appropriate?
- (Defendant question) What would in your opinion be a fair outcome? Do you feel that you should be punished? If so, which punishment do you consider the most appropriate?
- How would you feel if the court's verdict and the sentence it imposes deviates from the sentence that you consider the most appropriate? How important is it to you that the court's decision matches your opinion about how the defendant/you should be punished?

Statements

- Statement 1: What concerns me most in this case is that the sentence will be correct.
- Statement 2: Regardless of what the criminal law prescribes, I think the only just verdict/sentence in this case is the verdict/sentence that I consider most appropriate.
- Statement 3: If I feel that I have been treated fairly in this case, it will be easier for me to accept a verdict/sentence that does not match the verdict/sentence that I have in mind.

  (Additional explanation for victims: Can you imagine that your attitude towards the verdict/sentence would change if the police treated you disrespectfully? Would that fact influence your opinion about the most appropriate verdict/sentence for the offender? Can you image that you would have, so to say, a greater feeling of revenge? Additional explanation for offenders: Can you imagine that it would be easier for you to accept the verdict/sentence if the police had treated you well, or, conversely, that it would be more difficult to accept the verdict/sentence if the police had not treated you well?)
- Statement 4: (Victim statement) It does not matter to me how the police and the judicial actors treat me, as long as they make sure that the defendant is punished./(Offender statement) It does not matter to me how the police and the judicial actors treat me, as long as they make sure that I will not be punished too severely.

Closing questions

- Is there anything that we have discussed during our conversation that you had not given thought before?
- Is there anything that we have overlooked during the conversation? Are there any thoughts you would like to add? Are there other topics that you would like to discuss?
- Do you have any further questions for me?

Second interview: after trial and mediation

Opening questions/introductory questions

- Introduction to the interview
- What would you start with when asked how this experience has been for you?

(No transitional questions, given the fact that the topic that would be discussed first depended entirely on the respondent's answer to the opening question)

Key questions

- How did you experience the contacts with criminal justice staff, if any? How did you feel during those contacts, can you remember which thoughts crossed your mind? Was there anything that struck you as special?
- Could you give me a description of the courtroom? What is your opinion on courtrooms? (only if respondent attended the trial)
- How would you evaluate your experience with mediation (in case of participant)
- What did you think about the trial?
- Were you sufficiently prepared for the trial? If so, how did you prepare yourself?
- Could you describe the following people in your own words?
    - The public prosecutor
    - The judge
- Do you have the feeling that you have had an influence on the course of the trial, on the presentation of evidence and (in case of conviction) on the sentence that was pronounced?
- Did the trial meet your expectations?
- Was there any moment during the proceedings when you would have wanted to discuss certain decisions with those responsible?
- Which aspect of the criminal proceedings were you the least happy with? What was the biggest disappointment? What did you find the most frustrating? Was there anything that you think was positive about the experience?
- Do you have the feeling that all the professionals that you have encountered have treated you well?
- What is your opinion about the judgement?
- Have you discussed the outcome with anyone and have these people influenced your opinion on the outcome?

- Have you compared the judicial decision in your case to anything? (*Examples could be: decisions in similar other cases, one's own expectations or prior experiences or one's general opinion on punishment, but these examples were not prompted)*
- Looking back on the whole procedure, which aspect has been the most impressive for you?

Closing questions

- Research shows that people who have a prior experience with the criminal justice system are less positive about the criminal justice system and have less trust in the system than those who have never had a personal experience with it. How would you explain this finding?
- Which lessons have your learned from this experience? Knowing what you know now, with your experience, which advice would you give to people who need to go through the same experience?
- Supposing that you would again become involved in a case dealt with by the criminal justice system, is there anything that you would do differently? Should any of the other actors do something differently? Which improvements can be made to the criminal proceedings?
- Supposing that it would have been possible to settle the conflict with the other party outside of court, would you have done that? What is your opinion on such a system?
- During our first conversation I asked for your opinion on the criminal justice system before the facts and at the time of our conversation. Could you tell me if your attitude has changed in the meantime? If so, could you tell me what the reasons are?
- Is there anything that we have discussed during our conversation that you had not given thought before?
- Is there anything that we have overlooked during the conversation? Are there any thoughts you would like to add? Are there other topics that you would like to discuss?
- Do you have any further questions for me?

Annex 4: Survey (Dutch)

Ik vind het het meest/minst belangrijk dat...

1 = Volstrekt onbelangrijk (daar denk ik niet over na, het maakt mij niet zoveel uit)

7 = Uiterst belangrijk (dit houdt mij het sterkst van al bezig)

	Volstrekt onbelangrijk	Onbelangrijk	Eerder onbelangrijk		Eerder belangrijk	Belangrijk	Uiterst belangrijk
1. De rechter onpartijdig zal zijn en geen van de partijen zal bevoordelen.	1	2	3	4	5	6	7
2. De rechter mij met respect, vriendelijk en beleefd zal behandelen op de zitting.	1	2	3	4	5	6	7
3. De rechter bij zijn beslissing rekening zal houden met mijn mening over de straf.	1	2	3	4	5	6	7
4. Ik voldoende kansen zal krijgen om mijn standpunt en wensen duidelijk te maken.	1	2	3	4	5	6	7
5. De rechter zich correct zal gedragen, eerlijk zal zijn en niet zal liegen.	1	2	3	4	5	6	7
6. De rechter de straf zal opleggen die ik zelf in gedachten heb.	1	2	3	4	5	6	7
7. Ik het verloop van de zaak mee onder controle zal hebben en voorstellen mag doen.	1	2	3	4	5	6	7
8. De rechter alle partijen op dezelfde manier zal behandelen, zonder discriminatie.	1	2	3	4	5	6	7
9. Het vonnis in mijn voordeel zal zijn.	1	2	3	4	5	6	7
10. Ik feedback kan krijgen van de rechter wanneer ik iets vertel.	1	2	3	4	5	6	7

11. Ik inspraak zal hebben in de manier waarop de procedure op de zitting verloopt.	1	2	3	4	5	6	7
12. De rechter mij zal toelaten mijn standpunt uiteen te zetten over de straf.	1	2	3	4	5	6	7
13. De rechter het bewijsmateriaal grondig zal onderzoeken.	1	2	3	4	5	6	7
14. Ik zelf op een of andere manier mee zal kunnen beslissen over het vonnis.	1	2	3	4	5	6	7
15. De rechter mij in mijn waardigheid zal laten, geen kwetsende dingen zegt.	1	2	3	4	5	6	7
16. De rechter mij het gevoel zal geven mij au sérieux te nemen.	1	2	3	4	5	6	7
17. De methodes die de rechter zal gebruiken alle partijen gelijkwaardig behandelen.	1	2	3	4	5	6	7
18. Ook mijn kant van het verhaal op de zitting aan bod zal mogen komen.	1	2	3	4	5	6	7
19. De rechter de redenen voor zijn beslissing en zijn argumenten goed zal uitleggen.	1	2	3	4	5	6	7
20. Ik de rechter wanneer ik dat wens een keer persoonlijk zal kunnen spreken.	1	2	3	4	5	6	7
21. Ik de rechter op de zitting spontaan kan aanspreken wanneer ik een vraag heb.	1	2	3	4	5	6	7
22. De rechter duidelijk de moeite zal nemen om mijn standpunt te trachten begrijpen.	1	2	3	4	5	6	7
23. Ik mij zal kunnen verzetten wanneer de procedure volgens mij onjuist verloopt.	1	2	3	4	5	6	7
24. De rechter het dossier tot in de puntjes zal kennen en grondig heeft voorbereid.	1	2	3	4	5	6	7
25. De rechter mij zonder probleem het woord zal geven wanneer ik daarom verzoek.	1	2	3	4	5	6	7
26. De rechter de zaak nauwgezet zal onderzoeken en er zich niet te snel van af maakt.	1	2	3	4	5	6	7
27. Ik over een vetorecht kan beschikken tegen een in mijn ogen onjuist vonnis.	1	2	3	4	5	6	7
28. De rechter niet uit de hoogte doet of mij een gevoel van minderwaardigheid geeft.	1	2	3	4	5	6	7
29. Ik erin slaag de beslissing van de rechter in mijn gewenste richting te beïnvloeden.	1	2	3	4	5	6	7

Annex 5: Survey (translated to English)

It is important/unimportant to me that…

1 = Extremely unimportant

7 = Extremely important

	Extremely unimportant	Unimportant	Rather unimportant		Rather important	Important	Extremely important
1. The judge will be impartial and will favour neither party.	1	2	3	4	5	6	7
2. The judge will treat me with respect, friendly and politely.	1	2	3	4	5	6	7
3. The judge will take my opinion on sentencing into account.	1	2	3	4	5	6	7
4. I will have ample opportunity to state my position and clarify my wishes.	1	2	3	4	5	6	7
5. The judge will behave correctly, will be honest and will not lie.	1	2	3	4	5	6	7
6. The judge will impose the sentence that I have in mind.	1	2	3	4	5	6	7
7. I will be able to exert some control over the proceedings.	1	2	3	4	5	6	7
8. The judge will treat all parties alike, that he will not discriminate.	1	2	3	4	5	6	7
9. The judge's decision will be in my favour.	1	2	3	4	5	6	7
10. The judge will give me feedback after I have spoken.	1	2	3	4	5	6	7

11. I will have a say on the court proceedings.	1	2	3	4	5	6	7
12. The judge will allow me to give my opinion on the sentence that should be imposed.	1	2	3	4	5	6	7
13. The judge will carefully examine the evidence.	1	2	3	4	5	6	7
14. I will be able to co-decide on the verdict and the sentence.	1	2	3	4	5	6	7
15. The judge will respect my dignity and will not say hurtful things.	1	2	3	4	5	6	7
16. The judge will give me the feeling that he is taking me seriously.	1	2	3	4	5	6	7
17. The judge will apply methods that treat all parties equally.	1	2	3	4	5	6	7
18. My side of the story will be heard during the hearing.	1	2	3	4	5	6	7
19. The judge will carefully explain the reasons for his decision.	1	2	3	4	5	6	7
20. I will be able to speak to the judge in person if I wish to do so.	1	2	3	4	5	6	7
21. I will be allowed to spontaneously address the judge if I have a question.	1	2	3	4	5	6	7
22. The judge will visibly take effort to try to understand my position.	1	2	3	4	5	6	7
23. I will be able to intervene if I believe the procedures are not being applied correctly.	1	2	3	4	5	6	7
24. The judge is very well acquainted with the dossier and is thoroughly prepared.	1	2	3	4	5	6	7
25. The judge will allow me to speak on my request.	1	2	3	4	5	6	7
26. The judge will examine the case carefully and will take the time to do so.	1	2	3	4	5	6	7
27. I will have the right to veto the judge's decision.	1	2	3	4	5	6	7
28. The judge will not behave pretentiously or give me a feeling of inferiority.	1	2	3	4	5	6	7
29. I will be able to exert influence on the judge's decision.	1	2	3	4	5	6	7

Annex 6: Guide to focus groups (Dutch)

TOPIC 1: REDENEN VOOR DEELNAME AAN BEMIDDELING

Verdachten (totaal 23)

- Bemiddeling als relatietherapie (partnergeweld)
- Communiceren naar rechter
- Dacht dat dat onderdeel van de procedure was, dat het zo hoorde
- Dader komt zo beter tot besef
- **Om te praten met de andere partij 3**

  "R: Ik was dat natuurlijk al in mijn eentje van plan, allez, al aan het doen zonder dat ik het wist dat ik het mocht, maar…

  V: Hoe bedoel je?

  R: Ik had al naar het politiebureel gebeld, de commissaris gevraagd, dat uitgelegd, dat ik met die persoon wou afspreken, wat eigenlijk niet rechtstreeks mag gebeuren maar, allez, ik zat daar wel mee."
- **Excuses aanbieden - spijt uitdrukken 3**
- Het is het enige wat je van je zaak hoort
- **Goede wil tonen aan rechter 4**

  "Ik zeg ik wil gerust komen, om voor de rechtszaak toch ook een beetje een positieve invloed te laten zien, dat ik niet zomaar zeg ik veeg er mijn voeten aan."
- **Uit hoop op mildere straf 9**
- Ik ben onschuldig en wil alles doen om dat aan te tonen
- **Advocaat of justitieassistent heeft gezegd van best mee te werken 4**
- Ik moet toch betalen, ik kan het beter via bemiddeling doen
- In kader van VOV
- **Slachtoffer verzekeren dat het niet opnieuw zal gebeuren, geruststellen 3**
- Omdat zijn zoon (het slachtoffer) het initiatief had genomen tot bemiddeling
- **Slachtoffers verhaal vertellen wat er gebeurd is, wat de aanleiding was 3**
- Owv financiële toestand (advocaat te duur)
- Praten over wat er je overkomt
- **Rechtbank en gedoe vermijden 3**

  "Het is allemaal maar miserie die je best achterwege kunt laten, en ja, het is nu zo, en nu gaan we proberen, als dat afgehandeld is is het voor mij ook voorbij."
- **Relatie met slachtoffer of eigen achterban herstellen 3**
- **Schade regelen 3**
- Feiten reconstrueren
- **Verantwoordelijkheid nemen, vragen beantwoorden, slachtoffers betalen 3**
- Wegens eerdere positieve ervaring met (straf)bemiddeling
- **Vragen beantwoord zien 3**

  "En we gaan nu proberen om eens samen met die persoon aan tafel te zitten, om elkaars mening eens te horen."

Slachtoffers (totaal 31)

- Alle hulp die wordt aangeboden is welkom
- Als ze dat aanbieden is dat een teken dat dat nodig-nuttig is
- Angst voor dader kwijtraken
- Bemiddeling als relatietherapie
- **Boodschap overbrengen aan dader 3**
  "Ik maak hem wel duidelijk, hij denkt bijvoorbeeld, daar is dat wel goed voor, hij denkt bijvoorbeeld dat hij terug mag komen. Dan heb ik via de bemiddelaar gezegd van neen, dat moet duidelijk gemaakt worden dat hij niet mag terugkomen."
- Communiceren naar rechter
- Dacht dat ik daarmee inspraak zou hebben in de straf
- **Dader rechtbank of strafblad besparen – altruïstisch motief 5**
  "Ik weet dat als dat voor de rechtbank komt, dan krijgen die mannen waarschijnlijk een strafblad."
- **Dader tot besef brengen - duidelijk maken dat het moet stoppen 8**
- Eerdere positieve ervaring met bemiddeling
- **Expliciet NIET om schade te regelen - te 'onderhandelen' 3**
  "Want voor de rest, ik zeg het, als het persoonlijk over hem moest gaan dat ze zeggen van we gaan onderhandelen… Ik heb met die jongen niks te onderhandelen. Die heeft dat gedaan met mij en ik wil dat hij daarvoor gestraft wordt."
- Feiten reconstrueren
- **Geld of goederen terugkrijgen 3**
- **Het is beter dan straffen 3**
  "Ik kan mij voorstellen dat het voor hun op zijn minst meer tot nadenken stemt als ze contact hebben met hun slachtoffers. Dat dat hun ogen toch meer opent dan wanneer ze alleen maar met het gerecht in aanraking komen."
- Ik ben een nieuwsgierig iemand, sta open voor nieuwe dingen
- Ik kan mijn mening dan eens echt zeggen
- Kunnen uitleggen wat gevolgen voor slachtoffer waren
- Meer zekerheid om geld terug te krijgen
- Niet zo'n grote zaak, beter zo oplossen
- Omdat dat interessanter is voor justitie
- Omgeving zei dat ik dat moest doen
- Op aanraden van politie en verzekering
- Ouders dader laten weten wat hun kind heeft gedaan
- Owv beroep slachtoffer
- Praktische afspraken maken
- **Raad krijgen over rechten slachtoffer 5**
- Rechtbank en poespas vermijden
- **Relatie met dader herstellen 3**
- Slachtoffers zijn dan niet meer anoniem voor de daders, krijgen een gezicht
- Tonen dat men als slachtoffer wil meewerken aan een oplossing
- Verhaal eens kunnen doen - erover praten
- **Vragen beantwoord zien 12**
- Zaak gaat dan wat vlotter, sneller

TOPIC 2: POSITIEVE ASPECTEN VAN BEMIDDELING

Slachtoffers

- **Bron van informatie 14**
  "Als ik slachtofferhulp en bemiddeling niet had gehad, stond ik nergens met mijn zaak, dan wist ik totaal van niets."
  "Veel informatie geven ze eigenlijk. Die je anders niet krijgt. Die bemiddeling, ze mogen blijven doorgaan. Als dit er niet was, kon je gewoon niet tot rust krijgen."
  - Eerste contact na politie
  - Vaak de eerste maal dat men verneemt dat de zaak wordt gedagvaard
  - Informatie over verdachte / hoe ziet verdediging van tegenpartij eruit?
  - Informatie over eigen rechten en mogelijkheden / over rechtsgang
- **Dader krijgt gezicht 3**
- Hulp bij het regelen van andere zaken
- **Positief effect op verwerkingsproces 4**
  Echter: *"(…) een brief heb gekregen of ik daaraan wou meewerken. Maar tot nu toe vind ik daar weinig aan.*
  V: Hoezo?
  R: Ik heb niet echt zoiets van, dat dat helpt of zo."
- Kosten rechtszaak worden lager
- Dader toonde zich bewust van gevolgen van de feiten
- **Geen schrik meer om dader tegen het lijf te lopen – te zien 3**
- **Ik heb er iets mee kunnen afsluiten 4**
- **Erkenning 3**
  "En ik denk, zonder die bemiddeling had ik meer schuldgevoel gehad, de dader zei dat hij ook een slachtoffer was en dat ik er blijkbaar niet mee inzat. En dat heeft de bemiddelaar wel goed in zijn kop geprent: jij bent niet het slachtoffer, zij is het slachtoffer. En anders had ik geloofd dat hij ook slachtoffer was, ik ben nogal makkelijk beïnvloedbaar."
- Intieme sfeer - persoonlijker dan rechtszitting
- Psychologische bijstand
- **Verhaal eens kunnen doen 4**
- **Veilig omdat er een derde bij is 3**
- Manier voor communicatie naar dader
- Je moet op de zitting niet meer zoveel bediscussiëren, wint tijd
- **Gezien dat dader spijt heeft 3**
- Je kunt er tijd mee winnen, het gaat allemaal vlotter
- **Hoop dat het de dader tot besef heeft gebracht 3**
- **Vragen worden beantwoord door dader 3**
- Geeft zekerheid, dat heb je dan toch – voor de rechtbank weet je nooit wat het gaat worden
- Dader eindelijk doorzien
- Beeld van 'crimineel' wordt bijgesteld

Verdachten

- **Bron van informatie 10**

  "Omdat er hier heel veel mensen zitten, allez, niet alleen hier in de gevangenis, er zijn er nog, die met heel veel vragen zitten over hetgeen ze – allez, ze weten wel wat ze gedaan hebben, maar over de draagkracht daarvan, de gevolgen,… En wat dat betreft is die bemiddeling wel goed."

  -> Maar vooral omdat men dan pas te weten komt dat men gedagvaard wordt of hoe ernstig de zaak is

  "Dus ik vroeg om meer informatie en ik vroeg dan ook wat uiteindelijk mijn betrokkenheid was in die zaak, en ze zeiden, ah, je wordt aanzien als dader.

  V: Je hebt dat via hen vernomen?

  R: Ja, ik wist nog van niks."
- Ware toedracht feiten kan naar boven komen
- Bemiddelaar wijst op nieuwe inzichten
- Beter beeld van slachtoffer nu
- De zaak afsluiten
- **Rustig kunnen spreken met slachtoffer (of medeverdachte), zonder dat ruzie of agressie ontstaat 5**
- Heb nu afscheid kunnen nemen van het slachtoffer - hebben elkaar kunnen zeggen wat we nog moesten zeggen
- Anders is er geen enkele mogelijkheid om met het slachtoffer in contact te komen
- Je kunt een goede regeling treffen
- Je kunt respectvol en rustig spreken
- Niet alle slachtoffers zijn punitief
- Nu kunnen slachtoffer en ik tenminste weer goeiedag zeggen
- Kan geschillencultuur (!VS) voorkomen
- Schade herstellen naar eigen omgeving toe
- Verhaal eens kunnen doen zonder veroordeeld te worden

  "Ja, anders heb je toch een beetje het gevoel van, je hebt dan ook een nacht vastgezeten, je bent precies een gangster, je krijgt een stempel, en dan is er toch iemand die luistert, en dan heb je toch minder dat gevoel van 'je hebt dat gedaan, je behoort bij de criminelen'. Allez ja, je krijgt zo de stempel van crimineel, en dan is er toch iemand die luistert, je bent niet meer zo'n nummer, en ze stoppen u niet meer in die categorietjes."

TOPIC 3: PROBLEMEN MET HET AANBOD VAN BEMIDDELING

- Komt soms over als **opgedrongen**!!

"En dan daarna hebben we een brief gekregen van Suggnomè. Dat was ook een beetje dubbel omdat ***, zij stellen dan direct een concrete afspraak voor, ze zeggen van we hebben gehoord dat jullie gecontacteerd zijn door het parket en we stellen voor dat we die dag langskomen****. En in eerste instantie had ik zoiets van zeg alsjeblieft he, komaan he, ik wil dat helemaal niet." (SO)*

"Want ik had zoiets, toen ik die brief kreeg, van seg weer bemiddeling, ik heb al die strafbemiddeling gedaan. Wat komen ze nu weer af? Seg, is het nu nog niet genoeg? … Toen ik de uitleg had gehad was het wel duidelijk dat het een ander soort bemiddeling was." (DA)

" Omdat dat de gang van zaken is... ik weet niet... wij weten ook niet hoe dat nu gaat voortgaan hé. De politie geeft dat mee, je luistert, ja, je denkt dat je dat moet doen hé. Ja, ik dacht dat dat moest... allez, moeten niet, maar dat dat gewoon zo is. Dat dat erbij hoort." (DA)

- Soms hebben slachtoffers ook het gevoel dat een **directe bemiddeling** hen wordt opgedrongen!!

- Mensen begrijpen soms niet waarover het gaat – **verwarring** met slachtofferhulp, schadebemiddeling, …

"Er was een brief gekomen en ik heb daarop gereageerd, omdat ik dacht dat het ging om een soort ***begeleiding voor mijn dochter****." (SO)*

"V: Dus bemiddeling zou voor u betekenen: het minimaliseren bijna.
R: (twijfelt) Daar komt het niet echt op neer, maar ik had daar wel schrik van voor ik met de bemiddelaar had gesproken. Want bemiddeling trekt nogal rap op ***een minnelijke schikking****, en een minnelijke schikking…" (SO)*

"Ik dacht dat dat een dienst was die aangesproken was geweest om te zeggen kijk, er zijn zoveel kosten, we gaan dat zo regelen." (DA)

TOPIC 4: BEZORGDHEDEN OMTRENT BEMIDDELING

- **Het kan door daders misbruikt worden ifv mildere straf**

"Mijn indruk is, ik interpreteer dat als, die jonge gast, om een gunstige indruk te maken en zijn kansen op voorlopige invrijheidsstelling te verhogen, goed gedrag, goed gedrag is meewerken aan de bemiddeling, en als dat goed gedrag dan resultaat had gehad ***poef dan was het niet meer nodig****, en doet hij niet meer mee." (SO)*

- **Kan niet worden gebruikt op rechtbank tenzij wederzijdse toestemming… + degene die niet wil wordt daar op rechtbank dan ook niet mee geconfronteerd**

"Maar dan vind ik dat dat misschien ook de rechtbank voor een stuk, tijdens de eerste zitting misschien moet aan bod komen, ik vind dat de rechter dan moet weten dat er een poging tot bemiddeling is gedaan en dat er van haar kant geen reactie is gekomen of geen toegeving is gedaan. En stel haar dan op de zitting ook de vraag waarom, en ga dan verder. De instanties bestaan, die doen dan de moeite, en ik zeg niet dat we via bemiddeling hadden uitgeraakt, maar ondanks tijdgebrek en noem maar op sta ik daar wel voor open en wil ik mij er toch voor engageren." (SO)

"In het begin als we naar herstelbemiddeling gingen, zei de bemiddelaar van wat er nu gezegd wordt staat los van de rechtszaak, maar moesten er nu dingen gezegd worden die toch eigenlijk heel belangrijk zijn, zijn we wel verplicht dat door te spelen. Maar voor mij is dat alles he, dat papier dat daar ligt waarop zij zegt dat ze weet dat ik achteruit werd getrokken. Maar hij zegt dat dat dus niet gaat, dat hij dat niet kan doen. En toen had ik zoiets van, ***wat moet er dan nog meer gezegd worden in zo'n herstelbemiddeling dat het dan toch naar de rechter zou gaan****?" (DA)*

- **Belang van erkenning voor de moeite door omgeving én door rechter**

"En iedereen was ook, allez, hij en zijn familie, de advocaat, benadrukten ook allemaal dat ze het apprecieerden dat we dat wilden doen; niemand vond het evident dat we dat deden, niemand vond dat vanzelfsprekend." (SO)

"Pour le juge, la médiation, c'est des gens qui ont fait du travail pour elle. Si les gens sont d'accord avec la médiation, elle le met dans le jugement, elle gagne du temps. Mais je crois qu'elle n'a pas donnée assez d'importance à la médiation. Elle n'a pratiquement pas parlée de la médiation. Pour moi c'est du travail qui est fait pour lui, elle ne doit plus trancher et discuter, on le fait gagner du temps." (SO)

Annex 7: Guide to focus groups (translated to English)

TOPIC 1: REASONS FOR PARTICIPATING IN MEDIATION

Suspects (Total N of 23)

- Mediation as couples therapy (partner violence)
- Good way of communicating to the judge
- Thought it was a default part of the procedure
- Best way to raise offender's awareness
- **In order to talk to the other party 3**
  "R: Ik was dat natuurlijk al in mijn eentje van plan, allez, al aan het doen zonder dat ik het wist dat ik het mocht, maar…
  V: Hoe bedoel je?
  R: Ik had al naar het politiebureel gebeld, de commissaris gevraagd, dat uitgelegd, dat ik met die persoon wou afspreken, wat eigenlijk niet rechtstreeks mag gebeuren maar, allez, ik zat daar wel mee."
- **Offer apologies – express regret 3**
- It's the only thing one hears about the case
- **Show judge my good intentions 4**
  "Ik zeg ik wil gerust komen, om voor de rechtszaak toch ook een beetje een positieve invloed te laten zien, dat ik niet zomaar zeg ik veeg er mijn voeten aan."
- **Hope for milder punishment 9**
- I am innocent and will do anything to prove it
- **Lawyer or justice assistant told me that it was best to participate 4**
- I will have to pay the victim anyway, it is better to do that in the framework of mediation
- As a condition for conditional release
- **Reassure victim that it will not happen again 3**
- Because my son (the victim) has taken the initiative for mediation
- **Tell victims what happened and what the cause was 3**
- Because of financial situation (lawyer necessary for court but too expensive)
- To be able to talk about what is happening to me
- **To avoid court and all the fuss 3**
  "Het is allemaal maar miserie die je best achterwege kunt laten, en ja, het is nu zo, en nu gaan we proberen, als dat afgehandeld is is het voor mij ook voorbij."
- **Repair relationship with victim or own environment 3**
- **Arrange compensation 3**
- Reconstruct the facts
- **Take responsibility, answer victim's questions, pay victims 3**
- Because of a prior positive experience with mediation
- **Receive answers to questions 3**
  "En we gaan nu proberen om eens samen met die persoon aan tafel te zitten, om elkaars mening eens te horen."

Victims (Total N of 31)

- Any help that is offered is welcome
- This would not be offered if it were not useful
- Get rid of fear for offender
- Mediation as couples therapy (partner violence)
- **Convey messages to offender 3**
  "Ik maak hem wel duidelijk, hij denkt bijvoorbeeld, daar is dat wel goed voor, hij denkt bijvoorbeeld dat hij terug mag komen. Dan heb ik via de bemiddelaar gezegd van neen, dat moet duidelijk gemaakt worden dat hij niet mag terugkomen."
- Good way of communicating to the judge
- Thought it would allow me to have a say on the sentence (! ask judge to be mild)
- **Save offender court or criminal record – altruistic motive 5**
  "Ik weet dat als dat voor de rechtbank komt, dan krijgen die mannen waarschijnlijk een strafblad."
- **Raise offender's awareness – make clear that it needs to end 8**
- Because of a prior positive experience with mediation
- **Explicitly NOT in order to arrange damages – negotiate 3**
  "Want voor de rest, ik zeg het, als het persoonlijk over hem moest gaan dat ze zeggen van we gaan onderhandelen… Ik heb met die jongen niks te onderhandelen. Die heeft dat gedaan met mij en ik wil dat hij daarvoor gestraft wordt."
- Reconstruct the facts
- **Get money or goods back 3**
- I'm a curious person, open to new things
- **Receive answers to question 12**
- Case will be processed more quickly
- **It's better than punishment – more likely to raise offender's awareness 3**
  "Ik kan mij voorstellen dat het voor hun op zijn minst meer tot nadenken stemt als ze contact hebben met hun slachtoffers. Dat dat hun ogen toch meer opent dan wanneer ze alleen maar met het gerecht in aanraking komen."
- It allows me to have my say, to tell my opinion
- I can explain what the consequences of the crime were for me
- More certainty that I will get my money back
- It's not a serious crime, so it's better to solve it this way
- Because it is more interesting for the magistrates who will deal with the case (they have more information)
- A friend said that I should participate
- On the advice of the police/insurance company
- To let the offender's parents know what their son has done (only way to do so)
- Because of victim's profession
- To make practical arrangements
- **To get advice on victims' rights 5**
- To avoid court and the fuss
- **To repair relationship with offender 3**
- Offender gets to see victim, victim is not just an anonymous person anymore
- To show one's will to work on a solution
- To be able to tell one's story to someone

TOPIC 2: POSITIVE FEATURES OF MEDIATION

Victims

- **Important source of information 14**
  "Als ik slachtofferhulp en bemiddeling niet had gehad, stond ik nergens met mijn zaak, dan wist ik totaal van niets."
  "Veel informatie geven ze eigenlijk. Die je anders niet krijgt. Die bemiddeling, ze mogen blijven doorgaan. Als dit er niet was, kon je gewoon niet tot rust krijgen."
  - First contact after police
  - Often first time one finds out that the case will be prosecuted
  - Information on suspect and on what his/her arguments for defence will be
  - Information on one's own rights and possibilities and on the criminal proceedings
- **Put a face to offender 3**
- Help with arranging other practical matters
- **Positive influence on process of recovery 4**
  However: *"(…) een brief heb gekregen of ik daaraan wou meewerken.*
  Maar tot nu toe vind ik daar weinig aan.
  V: Hoezo?
  R: Ik heb niet echt zoiets van, dat dat helpt of zo."
- Legal costs are reduced
- Offender showed awareness of hurt caused
- **No longer afraid to meet/see offender 3**
- Intimate atmosphere – more personal than court
- Psychological support
- **Acknowledgement 3**
  "En ik denk, zonder die bemiddeling had ik meer schuldgevoel gehad, de dader die zei dat hij ook een slachtoffer was en dat ik er blijkbaar niet mee inzat. En dat heeft de bemiddelaar wel goed in zijn kop geprent: jij bent niet het slachtoffer, zij is het slachtoffer. En anders had ik geloofd dat hij ook slachtoffer was, ik ben nogal makkelijk beïnvloedbaar."
- **A chance to tell one's story 4**
- **Safe because of presence of third party 3**
- Good channel for communicating with offender
- Less time needs to be spent on case in court
- **I have seen that the offender is truly sorry**
- It allows saving time, case is processed more quickly
- **I am now able to leave it behind me 4**
- **Hope it brought the offender to awareness 3**
- **Questions have been answered by offender 3**
- More certainty of recovering money or goods
- I now see what kind of person the offender truly is
- Image of 'a criminal' is adjusted

Suspects

- **Important source of information 10**

  "Omdat er hier heel veel mensen zitten, allez, niet alleen hier in de gevangenis, er zijn er nog, die met heel veel vragen zitten over hetgeen ze – allez, ze weten wel wat ze gedaan hebben, maar over de draagkracht daarvan, de gevolgen,… En wat dat betreft is die bemiddeling wel goed."

  -> Especially because one often learns from the mediator that one will be prosecuted or how serious the case is

  "Dus ik vroeg om meer informatie en ik vroeg dan ook wat uiteindelijk mijn betrokkenheid was in die zaak, en ze zeiden, ah je wordt aanzien als dader.

  V: Je hebt dat via hen vernomen?

  R: Ja, ik wist nog van niks."
- The truth about the facts can come out
- Better idea now of who the victim is
- Close the case, leave it behind me
- **A chance for a quiet and respectful talk with the victim (or an accomplice), free from aggression 5**
- Said goodbye to victim, a chance for us to say what still needed to be said between us (prior relationship)
- It is the only way one can enter into contact with one's victim if one wishes to
- A chance to make a good arrangement
- Learned that not all victims are punitive
- The victim and I will be able to say hello if we bump into each other some day
- Can prevent culture of litigation like in U.S.
- Repair the damage done to one's own close ones
- Tell one's story without being judged

  "Ja, anders heb je toch een beetje het gevoel van, je hebt dan ook een nacht vastgezeten, je bent precies een gangster, je krijgt een stempel, en dan is er toch iemand die luistert, en dan heb je toch minder dat gevoel van 'je hebt dat gedaan, je behoort bij de criminelen'. Allez ja, je krijgt zo de stempel van crimineel, en dan is er toch iemand die luistert, je bent niet meer zo'n nummer, en ze stoppen u niet meer in die categorietjes."

TOPIC 3: PROBLEMS WITH THE OFFER OF MEDIATION

- Sometimes the offer is experienced as an obligation!!

"En dan daarna hebben we een brief gekregen van Suggnomè. Dat was ook een beetje dubbel omdat ***, zij stellen dan direct een concrete afspraak voor, ze zeggen van we hebben gehoord dat jullie gecontacteerd zijn door het parket en we stellen voor dat we die dag langskomen****. En in eerste instantie had ik zoiets van zeg alsjeblieft he, komaan he, ik wil dat helemaal niet." (SO)*

"Want ik had zoiets, toen ik die brief kreeg, van seg weer bemiddeling, ik heb al die strafbemiddeling gedaan. Wat komen ze nu weer af? Seg, is het nu nog niet genoeg? … Toen ik de uitleg had gehad was het wel duidelijk dat het een ander soort bemiddeling was." (DA)

" Omdat dat de gang van zaken is... ik weet niet... wij weten ook niet hoe dat nu gaat voortgaan hé. De politie geeft dat mee, je luistert, ja, je denkt dat je dat moet doen hé. Ja, ik dacht dat dat moest... allez, moeten niet, maar dat dat gewoon zo is. Dat dat erbij hoort." (DA)

- Sometimes victims have the feeling that **direct mediation** is forced upon them!!

- Some do not understand what is offered – confusion with victim support and mediating with a view to arrange damages and compensation…

"Er was een brief gekomen en ik heb daarop gereageerd, omdat ik dacht dat het ging om een soort ***begeleiding voor mijn dochter****." (SO)*

"V: Dus bemiddeling zou voor u betekenen: het minimaliseren bijna.
R: (twijfelt) Daar komt het niet echt op neer, maar ik had daar wel schrik van voor ik met de bemiddelaar had gesproken. Want bemiddeling trekt nogal rap op ***een minnelijke schikking****, en een minnelijke schikking…" (SO)*

"Ik dacht dat dat een dienst was die aangesproken was geweest om te zeggen kijk, er zijn zoveel kosten, we gaan dat zo regelen." (DA)

TOPIC 4: BEZORGDHEDEN OMTRENT BEMIDDELING

- **Offenders can abuse it in order to influence the judgement**

"Mijn indruk is, ik interpreteer dat als, die jonge gast, om een gunstige indruk te maken en zijn kansen op voorlopige invrijheidsstelling te verhogen, goed gedrag, goed gedrag is meewerken aan de bemiddeling, en als dat goed gedrag dan resultaat had gehad ***poef dan was het niet meer nodig****, en doet hij niet meer mee." (SO)*

- **Information cannot be used in court unless mutual consent… + the one who refused to take part is not confronted with this in court**

"Maar dan vind ik dat dat misschien ook de rechtbank voor een stuk, tijdens de eerste zitting misschien moet aan bod komen, ik vind dat de rechter dan moet weten dat er een poging tot bemiddeling is gedaan en dat er van haar kant geen reactie is gekomen of geen toegeving is gedaan. En stel haar dan op de zitting ook de vraag waarom, en ga dan verder. De instanties bestaan, die doen dan de moeite, en ik zeg niet dat we via bemiddeling hadden uitgeraakt, maar ondanks tijdgebrek en noem maar op sta ik daar wel voor open en wil ik mij er toch voor engageren." (SO)

"In het begin als we naar herstelbemiddeling gingen, zei de bemiddelaar van wat er nu gezegd wordt staat los van de rechtszaak, maar moesten er nu dingen gezegd worden die toch eigenlijk heel belangrijk zijn, zijn we wel verplicht dat door te spelen. Maar voor mij is dat alles he, dat papier dat daar ligt waarop zij zegt dat ze weet dat ik achteruit werd getrokken. Maar hij zegt dat dat dus niet gaat, dat hij dat niet kan doen. En toen had ik zoiets van, ***wat moet er dan nog meer gezegd worden in zo'n herstelbemiddeling dat het dan toch naar de rechter zou gaan****?" (DA)*

- **Importance of acknowledgement by environment and judge**

"En iedereen was ook, allez, hij en zijn familie, de advocaat, benadrukten ook allemaal dat ze het apprecieerden dat we dat wilden doen; niemand vond het evident dat we dat deden, niemand vond dat vanzelfsprekend." (SO)

"Pour le juge, la médiation, c'est des gens qui ont fait du travail pour elle. Si les gens sont d'accord avec la médiation, elle le met dans le jugement, elle gagne du temps. Mais je crois qu'elle n'a pas donnée assez d'importance à la médiation. Elle n'a pratiquement pas parlée de la médiation. Pour moi c'est du travail qui est fait pour lui, elle ne doit plus trancher et discuter, on le fait gagner du temps." (SO)

Annex 8: Rotated factor matrices of pilot studies

First pilot study

Rotated Factor Matrix[a]

	Factor						
	1	2	3	4	5	6	7
Mening over straf in rekening gebracht (BC1 mening)	,694	-,051	,052	-,024	,290	,013	,067
Kans stpt over vonnis uitdrukken (BC2 stpt)	,601	-,083	-,015	,063	-,008	,253	,023
Mee kunnen beslissen over vonnis (BC3macht)	,775	,028	,140	-,037	-,006	,161	,011
Rechter onpartijdig (NE1onpart)	-,060	,437	-,070	,120	,031	-,083	,209
Rechter niet discriminerend (NE2discr)	-,092	,647	-,058	,006	,162	,125	,052
Gelijke mogelijkheden uiten mening (NE3mghdn)	,117	,412	,317	,367	-,049	,165	,283
Methodes gelijkwaardige behandeling (NE4method)	-,028	,784	,042	-,013	,024	,148	,087
Voorstellen mbt procesverloop (PC1voorstel)	,643	,205	,049	,221	,009	-,142	-,038
Inspraak in procesverloop (PC2inspraak)	,664	,133	,070	,270	,098	,173	-,170
Rechter vriendelijk en beleefd (ST1beleefd)	,097	,064	,294	,179	,920	,120	,080
Rechter laat in waardigheid (ST2waardig)	,137	-,025	,966	,158	,129	,014	-,070
Rechter neemt verhaal serieus (ST3serieux)	,038	-,017	,603	,091	,181	,123	,241
Eigen kant van verhaal wordt gehoord (ST4luisteren)	,123	,174	,113	,271	,085	-,018	,454
Rechter correct en eerlijk (TR1eerlijk)	,051	,236	,176	-,009	,285	,292	,152
Beslissing gebaseerd op feiten (TR2feiten)	,091	,428	,071	,196	-,101	,000	-,150
Rechter grondig te werk mbt bewijs (TR3grondig)	-,066	,019	,104	,560	,011	,160	,115
Kans bewijs voorleggen (VC1bewijs)	,227	,103	-,031	,570	,139	-,212	,091
Kans stpt en wensen uitdrukken (VC2stpt)	,292	,104	,117	,176	,074	,057	,353
Rechter geeft feedback (VC3feecbk)	,195	,147	,092	,141	,104	,705	-,023
Strafoplegging volgens eigen MM (VN1MM)	,772	-,082	-,011	,028	-,028	-,010	,230
Strafoplegging wenselijkheid (VN2wenselijk)	,592	-,164	,032	-,124	-,081	-,077	,173
Strafoplegging rechtvaardigheid (VN3RV)	,014	,096	,142	,246	,032	,121	,054

Extraction Method: Maximum Likelihood. Rotation Method: Varimax with Kaiser Normalization. a. Rotation converged in 8 iterations.

Second pilot study

Rotated Factor Matrix[a]

	Factor				
	1	2	3	4	5
Rechter onpartijdig (NE1onpart)	-,025	,532	-,194	,107	,080
Kans bewijs voorleggen (VC1bewijs)	,115	,101	,019	,231	,802
Rechter vriendelijk en beleefd (ST1beleefd)	,145	,133	,477	,025	,317
Mening over straf in rekening gebracht (BC1mening)	,652	,002	,307	,117	,024
Kans stpt en wensen uitdrukken (VC2stpt)	,442	,056	,263	-,066	,430
Rechter correct en eerlijk (TR1eerlijk)	-,029	,473	,323	-,157	,170
Strafoplegging volgens eigen MM (VN1MM)	,756	,036	,010	,073	-,077
Voorstellen mbt procesverloop (PC1voorstel)	,585	,303	,183	,137	,132
Rechter niet discriminerend (NE2discr)	,009	,798	,101	-,091	-,083
Strafoplegging wenselijkheid (VN2wenselijk)	,561	-,165	,008	-,125	,107
Beslissing gebaseerd op feiten (TR2feiten)	,018	,077	,022	-,057	,180
Gelijke mogelijkheden uiten mening (NE3mghdn)	,139	,255	-,006	,250	,129
Rechter geeft feedback (VC3feedbk)	,044	,170	,344	,561	,065
Inspraak in procesverloop (PC2inspraak)	,259	,180	,285	,199	,037
Strafoplegging distributieve rechtvaardigheid (VN3RV)	,077	,146	-,044	,039	-,221
Kans stpt over vonnis uitdrukken (BC2stpt)	,388	,111	,029	,134	,111
Rechter grondig te werk mbt bewijs (TR3grondig)	,078	,526	,078	,077	,312
Mee kunnen beslissen over vonnis (BC3macht)	,694	,065	,018	,208	-,060
Rechter laat in waardigheid (ST2waardig)	,001	,075	,662	,013	-,038
Rechter neemt verhaal serieus (ST3serieux)	,165	-,005	,597	-,022	,182
Methodes gelijkwaardige behandeling (NE4method)	,057	,679	-,020	,103	-,154
Eigen kant van verhaal wordt gehoord (ST4luisteren)	,334	,041	,187	,005	,252
Rechter geeft argumenten voor beslissing (TR4argum)	-,078	,241	,321	,451	,250
Kans tot persoonlijk gesprek met rechter (VC4gesprek)	,138	-,116	,354	,465	-,106
Rechter spontaan aanspreken (VC5aanspr)	,195	,062	,038	,638	-,141
Rechter probeert stpt te begrijpen (ST5begrip)	,353	,073	,363	,109	,108
Verzetten tegen onjuiste procedure (PC3verzet)	,220	,297	-,191	,167	,323
Strafoplegging distributieve rechtvaardigheid (VN4DJ)	,094	-,146	-,122	,231	,098
Dossierkennis en voorbereiding rechter (TR5voorb)	-,002	,347	,237	,204	,053
Het woord krijgen op verzoek (VC6woord)	,442	-,071	-,019	,492	-,066
Rechter onderzoekt nauwgezet (TR6nauw)	-,011	,595	,296	-,161	,306
Vetorecht tegen 'onjuist' vonnis (BC4veto)	,402	,158	-,030	,333	-,013
Geen gevoel van minderw tov rechter (ST6minderw)	,105	-,059	,654	,248	-,087
Vonnis in gewenste richting beïnvloeden (BC5invloed)	,608	-,139	,041	,098	-,009

Extraction Method: Maximum Likelihood. Rotation Method: Varimax with Kaiser Normalization. a. Rotation converged in 8 iterations.

Annex 9: Results of the analysis of the surveys

The tables below show the mean and standard deviation of each of the items that was contained in the survey, except for item 29. This item was excluded from the analysis because there were problems with its interpretation; it was not well-formulated. The table of the first wave interviews includes a column 'comparison', this column lists the levels of significance resulting from the t-tests and Mann-Whitney tests that were used to find out whether there were significant differences between victims and offenders.

First wave interviews

Item	TOTAL SAMPLE		VICTIMS		OFFENDERS		COMPARISON
	Mean	SD	Mean	SD	Mean	SD	Sig.
1	6.67	0.566	6.64	0.638	6.72	0.461	.863
2	5.95	1.112	6.16	1.068	5.67	1.138	.101
3	5.26	1.308	5.16	1.068	5.41	1.622	.267
4	5.93	1.100	5.72	1.242	6.22	0.808	.208
5	6.77	0.480	6.88	0.332	6.61	0.608	.085
6	4.86	1.489	4.56	1.474	5.28	1.474	.120
7	4.84	1.526	4.68	1.626	5.06	1.392	.433
8	6.47	0.767	6.28	0.891	6.72	0.461	.101
9	5.51	1.535	5.46	1.560	5.59	1.543	.793
10	5.53	1.351	5.20	1.500	6.00	0.970	.069
11	4.09	1.716	3.80	1.803	4.50	1.543	.190
12	5.40	1.218	5.00	1.225	5.94	0.998	.010**
13	6.60	0.623	6.72	0.542	6.44	0.705	.151
14	4.16	1.785	3.64	1.705	4.89	1.676	.022*
15	6.21	1.036	6.44	0.870	5.89	1.183	.088
16	6.51	0.631	6.64	0.490	6.33	0.767	.204
17	6.33	0.721	6.33	0.702	6.33	0.767	.933
18	6.44	0.734	6.40	0.764	6.50	0.707	.686
19	6.42	0.932	6.52	0.714	6.28	1.179	.508
20	4.53	2.039	4.40	2.273	4.72	1.708	.599
21	4.33	1.782	4.16	2.035	4.56	1.381	.452
22	6.30	0.708	6.24	0.663	6.39	0.778	.390
23	5.65	1.429	5.80	1.291	5.44	1.617	.427
24	6.33	0.944	6.28	0.936	6.39	0.979	.661
25	4.79	1.627	4.48	1.828	5.22	1.215	.118
26	6.50	0.672	6.50	0.780	6.50	0.514	.599
27	4.33	2.113	3.76	2.166	5.11	1.811	0.037*
28	6.29	0.700	6.33	0.963	6.22	1.003	.555

* Significant at .05 level

** Significant at .01 level

Second wave interviews

Item	TOTAL SAMPLE		VICTIMS		OFFENDERS	
	Mean	SD	Mean	SD	Mean	SD
1	6.80	0.523	6.77	0.599	6.86	0.378
2	6.45	0.686	6.54	0.776	6.29	0.488
3	4.80	1.642	4.62	1.850	5.14	1.215
4	6.55	0.605	6.62	0.650	6.43	0.535
5	6.70	0.571	6.69	0.630	6.71	0.488
6	3.90	1.744	3.69	1.797	4.29	0.704
7	4.75	1.888	4.62	1.981	5.00	1.826
8	6.20	1.399	5.92	1.656	6.71	0.488
9	4.70	1.658	5.08	1.801	4.00	1.155
10	5.85	1.089	6.00	1.225	5.75	0.787
11	3.60	1.635	3.46	1.713	3.86	1.574
12	4.85	1.725	4.77	1.964	5.00	1.291
13	6.75	0.444	6.77	0.439	6.71	0.488
14	3.45	1.820	3.15	1.994	4.00	1.414
15	6.65	0.489	6.85	0.376	6.29	0.488
16	6.50	0.607	6.69	0.630	6.14	0.378
17	6.20	1.196	6.00	1.414	6.57	0.535
18	6.40	0.821	6.62	0.650	6.00	1.000
19	6.50	0.761	6.54	0.877	6.43	0.535
20	4.15	2.084	4.15	2.230	4.14	1.952
21	3.70	1.720	3.77	2.006	3.57	1.134
22	6.20	1.056	6.38	0.768	5.86	1.464
23	5.75	1.118	6.00	0.913	5.29	1.380
24	6.25	1.209	6.31	1.109	6.14	1.464
25	4.85	1.663	5.31	1.702	4.00	1.291
26	6.45	0.945	6.85	0.376	5.71	1.254
27	3.25	1.888	2.85	1.772	4.00	2.000
28	6.70	0.470	6.85	0.376	6.43	0.535